Some Significant Forum Non Conveniens Decisions Since Sinochem

While the long-term practical effect of *Sinochem* on the American doctrine of forum non conveniens remains to be seen, the Federal Courts of Appeals are beginning to shape the landscape in the first six months since the Court's decision.

The most significant forum non conveniens decision since *Sinochem* was recently handed-down by the Seventh Circuit. In *Gullone v. Bayer Corp.*, 484 F.3d 951 (7th Cir. 2007), a group of U.K.-based plaintiffs were among those that sued defendant drug companies for allegedly being exposed to the HIV or Hepatitis C virus during blood transfusions. Judge Diane Wood, writing for a unanimous panel, reviewed the current state of the forum non conveniens doctrine in U.S. courts, and affirmed a district court's dismissal of U.K plaintiffs on forum non conveneins grounds in favor of an English forum:

> *Although we find it a close call, largely because the district court placed surprisingly little weight on the interest of . . . the original forum in this litigation and it may have overestimated the administrative difficulties in keeping the case in the United States, we conclude in the end that the court acted within its discretion when it dismissed the case.*

While Judge Wood engaged a scoping review of English case law regarding Plaintiff's causes of action, in particular the recent decision of the House of Lords in *Fairchild v. Glenhaven Funeral Servs., Ltd.*, (2003) 1 A.C. 32 (H.L.), the decision tends to presage that the ultimate battleground for forum non conveniens will rest in the U.S. district courts. Sinochem's strong authorization of trial-court discretion over this fact-based inquiry will continue to scare appellate courts from more intense review. The Seventh Circuit website has a link to the oral argument in *Gullone*.

For sure, *Gullone* is not the only FNC dismissal in favor of a foreign forum in the wake of *Sinochem*; other circuits have similarly affirmed such dismissals, though

in unpublished decisions. *See, e.g., Gilstrap v. Radianz, Ltd*., No. 06-3984, 2007 U.S. App. LEXIS 13686 (June 11, 2007) (dismissing a tortious interference claim in favor of an English forum).

Of the most interesting unpublished decisions applying the actual holding in *Sinochem*, the Third Circuit has ironically moved to the forefront. In *Davis Int'l, LLC v. New Start Group Corp*., Nos-06-2294/2408, U.S. App. LEXIS 12032 (3rd Cir., May 23, 2007), a group of Russian defendants were sued in the District Court for the District of Delaware, and sought to dismiss the claims based on, *inter alia*, subject-matter jurisdiction, personal jurisdiction, and direct estoppel of a prior federal decision. The latter motion was based on a 2000 decision by the Southern District of New York that dismissed indentical claims against the Defendants on forum non conveniens grounds in favor of a Russian forum. The District of Delaware dismissed the new claims "by reason of the estoppel effect of another court's forum non conveniens decision, without first deciding [Plaintiff's] subject-matter and personal jurisdiction motions." The Third Circuit (per judge Debevoise, sitting by designation) affirmed this course "in light of" *Sinochem* . *Davis* thus represents a slight expansion of *Sinochem;* not only are forum non conveniens dismissals proper before jurisdiction is established, but so are estoppel dismissals based on a prior forum non conveniens determination

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More Reflections on Sinochem

This post is written by Greg Castanias and Victoria Dorfman, attorneys with the law firm of Jones Day in Washington, D.C. who represented Sinochem before the Supreme Court. It originally appeared on Opinio Juris last week, and is cross-posted with their generous permission. The decision, briefs and other reflections on Sinochem also previously appeared on this site.

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We're grateful to have the opportunity to give you some preliminary views on the Sinochem decision issued last week—*Sinochem International Co., Ltd. v. Malaysia International Shipping Corp.*, 127 S. Ct. 1184 (2007). Since we are lawyers, after

all, we need to start with a disclaimer: These are our views alone—not those of our law firm, our partners, or our other colleagues; and not those of our client in this case (indeed, not those of any of our clients, past, present, or future).

Obviously, we are pleased about the result in the case, and about the central holding in the case, which embraced the argument we made to the Court: a district court has the power (which is to say the discretion) to dismiss a lawsuit on forum non conveniens grounds before making a conclusive determination of its own jurisdiction (either subject-matter jurisdiction, which is the power of the court itself, or personal jurisdiction, which is the power of the court over a defendant). As your readers probably know, this resolved a split in the circuits on this issue which, somewhat to our surprise at first, was four-to-two against our position (after we filed our merits brief in the case, the Seventh Circuit, in a case called *Intec USA, LLC v. Engle*, 467 F.3d 1038 (7th Cir. 2006), switched sides on the split, distinguished its prior decision in Kamel *v. Hill-Rom Co.*, 108 F.3d 799 (7th Cir. 1997), and the Supreme Court ended up quoting from Intec several times in its opinion).

But the longer-term contribution of the Sinochem decision may not be as much in the narrow area of forum non conveniens, but more broadly in its clarification of what *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83 (1998) means. *Steel Co*. had held that "[w]ithout jurisdiction the court cannot proceed at all in any cause," and further held that a federal court may not assume jurisdiction for the purposes of deciding the merits of the case. Only one Term later, the Court in *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574 (1999), held that there is no mandatory "sequencing of jurisdictional issues," and thus, a court may dismiss for lack of personal jurisdiction without first establishing subject-matter jurisdiction.

This left quite a bit of confusion in the lower courts, and it was that confusion that led to the split on the forum non conveniens issue. As one law-review article we quoted in the Petition put it, the Supreme Court's "failure to categorically redefine the limits of the Steel rule has effectively opened Pandora's box to the speculating minds of courts and legal scholars." What ended up happening in the forum non conveniens area is that the Third Circuit (and the Fifth, Seventh—at least at the time—and Ninth Circuits) had read the *Steel Co*. bar on "hypothetical jurisdiction" as requiring courts to resolve personal and subject-matter jurisdiction both (even though Ruhrgas told them they could take those two in whatever order they chose) before taking up any other issue.

So we urged the Supreme Court that taking up our Petition would not only allow it to resolve the split that had emerged on the forum non conveniens issue, but would also provide a golden opportunity to clarify what the Steel Co. bar on hypothetical jurisdiction meant—that is, it meant that courts had to decide jurisdiction before reaching the merits, but not before reaching another "threshold, non-merits issue"—like forum non conveniens. The Court agreed with us, stating its holding as: "[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," including subject-matter and personal jurisdiction. The Court further explained that forum non conveniens is a "threshold, non-merits issue" because "[r]esolving a forum non conveniens motion does not entail any assumption by the court of substantive law-declaring power."

We think it's a fair reading of the Sinochem decision that the Court clarified, for all contexts, and not just forum non conveniens, that the *Steel Co*. ban on hypothetical jurisdiction is only a ban on merits determinations. As the Court put it, quoting the Intec decision from the Seventh Circuit, "Jurisdiction is vital only if the court proposes to issue a judgment on the merits." Certainly, this understanding harmonizes the Court's rulings—both before and after *Steel Co*.—in a wide variety of contexts, e.g., declining to adjudicate state-law claims on discretionary grounds without first determining whether the court has pendent jurisdiction over those claims, *Moor v. Alameda County,* 411 U.S. 693 (1973); abstaining under Younger v. Harris, 401 U.S. 37 (1971), without first determining whether the case presented an Article III case or controversy, *Ellis v. Dyson*, 421 U.S. 426 (1975); or dismissing under *Totten v. United States*, 92 U.S. 105 (1876), which prohibits suits against the Government based on covert espionage agreements, before addressing jurisdiction, *Tenet v. Doe*, 544 U.S. 1 (2005).

The logic of the Court's decision also suggests that suits involving international interests may be properly dismissed at the outset on other non-merits grounds, such as international comity, or exhaustion, or the political-question doctrine. In fact, the D. C. Circuit has already held that the political-question doctrine can be addressed before subject-matter jurisdiction under the Foreign Sovereign Immunities Act because the political question doctrine is itself a "jurisdictional limitation." *Hwang Geum Joo v. Japan*, 413 F.3d 45, 48 (D.C. Cir. 2005), cert. denied, 126 S. Ct. 1418 (2006).

But at the same time, it's important to understand the limits of the Court's

holding. For one, the Court's decision does not say that courts ordinarily should dismiss a suit on forum non conveniens grounds at the outset. Quite the contrary: The Court emphasized that "[i]n the mine run of cases, jurisdiction will involve no arduous inquiry and both judicial economy and the consideration ordinarily accorded the plaintiff's choice of forum should impel the federal court to dispose of those issues first." (Emphasis added.) The only issue here was a federal court's power to do that in appropriate cases—as the Court said, "when considerations of convenience, fairness, and judicial economy so warrant," "[a] district court . . . may dispose of an action by a forum non conveniens dismissal, bypassing questions of subject-matter and personal jurisdiction."

For another, there's the lurking issue of conditional dismissals for forum non conveniens. (In our case, the dismissal was unconditional, because Sinochem itself had initiated a now-fully-completed suit in China's admiralty court, so there was no need for the district court to impose a condition that Sinochem agree to jurisdiction in China, or that Chinese courts accept jurisdiction.) While the Court technically left open the conditional-dismissal question, the logic of the opinion suggests that even a conditional forum non conveniens dismissal issued prior to ascertaining jurisdiction would be permissible—that, too, would be a non-merits ruling, and the court would not be "propos[ing] to issue a judgment on the merits." Furthermore, as Doug Hallward-Driemeier, the Assistant to the Solicitor General (who was supporting us as amicus curiae), said at oral argument, when a court conditionally dismisses a case, it bases its ruling on its understanding of the facts as they bear on the analysis, such as that defendant agrees to waive any objection to jurisdiction; that "understanding of fact is a condition of the dismissal."

As our economy (and hence litigation) becomes more global (Greg will add that that's been a major change that he has seen over his 17 years of practicing law—the shift in his U.S. practice from mostly domestic disputes to mostly disputes having some international flavor), there are greater chances for foreign defendants to be haled into U.S. courts over mostly or entirely foreign disputes. So to what classes of cases might this ruling be particularly applicable? Obviously, where the asserted ground for federal jurisdiction is the Foreign Sovereign Immunities Act, the defendant is almost always a foreign individual or company, and the jurisdictional analyses can be lengthy and complicated: The Solicitor General noted in his brief that it would have been particularly

convenient to dismiss on forum non conveniens grounds a suit against the Republic of Austria to obtain allegedly stolen Gustav Klimt paintings, *see Republic of Austria v. Altmann*, 541 U.S. 677 (2004), because it would have avoided years of litigation over Austria's sovereign immunity under the FSIA, and the parties also noted the recent decision in Turedi *v. Coca Cola Co.*, 2006 WL 3187156 (S.D.N.Y. Nov. 2, 2006), which allowed the district court to avoid resolving "immensely complex" questions of subject matter and personal jurisdiction in a suit brought by Turkish citizens alleging that they had been attacked and tortured by Turkish police at the direction of a Coca-Cola bottling joint venture in Istanbul. Another jurisdictional ground that comes to mind as bringing essentially foreign disputes into U.S. courts is the Alien Tort Claims Act, an ancient statute which has been the subject of some recent controversy and litigation, and which provides federal jurisdiction over tort claims made by aliens, alleging that the tort was "committed in violation of the law of nations or a treaty of the United States." Finally, of course, there are admiralty-jurisdiction cases like the Sinochem case itself. Here, it bears noting that, at least in the earliest days of forum non conveniens in the United States, that doctrine applied mostly in admiralty cases.

We have joked to one another that this is "the sort of case that only federal-jurisdiction dorks like us could love." And certainly it was a stealth decision the day it came out—the press covered some of the denials of certiorari issued that day with far more interest and enthusiasm. But we also think that this decision is going to play out over time as a profoundly important one in the way that litigation is pursued in the federal courts of the United States. On a personal note, the case was a lot of fun for both of us; we were proud to represent Sinochem in what we believe to be one of the first cases where a Chinese company came before the U.S. Supreme Court; and we are grateful to Opinio Juris for giving us an opportunity to relive this great experience.

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 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.

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.

Forum Non Conveniens and Jurisdiction Clauses in Ontario

The Court of Appeal for Ontario has released *Red Seal Tours Inc. v. Occidental Hotels Management B.V.* (available here). The decision is of note for three reasons.

- The court reverses the motions judge's decision not to grant a stay of proceedings. When these sort of conflicting decisions happen on the same facts, it can raise concerns about the way these motions prolong preliminary disputes in litigation.
- The court treats a contract that did not contain a jurisdiction clause as "part and parcel" of a series of related contracts that did contain such a clause (in favour of Aruba). The motions judge gave no effect to the clause, but the appeal court gives it central and crucial weight.
- The court's order is to "permanently stay" the proceedings. For more on this language see C. Dusten and S.G.A. Pitel, "The Right Answer to Ontario's Jurisdictional Questions: Dismiss, Stay or Set Service Aside" (2005) 30 Advocates' Quarterly 297 at 308. I have troubles with the concept of a permanent stay, since by its nature a stay has a temporary quality (unlike a dismissal). I wonder if a "permanent stay" here could be seen to signal a move towards the notion of dismissing cases on the basis of forum non conveniens recently seen in the United States Supreme Court in *Sinochem*.

Latest Issue of "Praxis des Internationalen Privat- und Verfahrensrechts" – Annotation on "Color Drack"

Recently, the latest issue of the German legal journal *Praxis des Internationalen Privat- und Verfahrensrecht* ("IPRax") has been published.

I.) Annotation on *Color Drack*

The issue contains *inter alia* an annotation by *Peter Mankowski* (Hamburg) on the ECJ's judgment in *Color Drack GmbH./.Lexx International Vertriebs GmbH* of 3 May 2007 where the Court had to deal with the question of jurisdiction in cases where there are several places of delivery within a single Member State.

Mankowski outlines in his annotation six potential solutions, pointing out, however, that none of them is – due to the complexity of the issue – completely convincing. This is, according to *Mankowski*, also true with regard to the approach adopted by the ECJ, which has developed a two-stage solution for identifying the competent court in cases where there are several places of delivery within a single Member State: According to the ECJ, "the court having jurisdiction to hear all the claims based on the contract for the sale of goods is that for the principal place of delivery, which must be determined on the basis of economic criteria. In the absence of determining factors for establishing the principal place of delivery, the plaintiff may sue the defendant in the court for the place of delivery of its choice."

Mankowski examines this solution critically and points out that determining the main focus of the deliveries, as advocated by the Court, implied uncertainty which contravened the aims of the Regulation. Also the subsidiary solution of the Court which shall be applied in cases where no main focus can be ascertained, the claimant's choice, is regarded sceptically since the Court's premise, in these

cases all places of (part) deliveries were equivalent, could not be agreed with.

Due to the uncertainties which are attended with determining the main focus, *Mankowski* asks for further concretizing criteria and suggests to proceed – following choice of law rules which try to designate the law with the closest link to the case – from the assumption that it is decisive where the deliverer's place of business which is in charge of the contract is situated. In cases where nothing is delivered at this place, Art. 5 (1) lit. c Brussels I Regulation referred to Art. 5 (1) lit. a Brussels I Regulation and consequently to national law.

See regarding this case also our previous posts on the Advocate General´s opinion, the judgment and further annotations.

II.) Contents

In addition to this annotation the new issue of the "IPRax" contains *inter alia* the following contributions:

- Article by *Axel Halfmeier* (Bremen) on the action raising an objection to the judgment claim ("Die Vollstreckungsgegenklage im Recht der internationalen Zuständigkeit")
- *Wolf-Georg Ringe* (Oxford) examines the impact of the ECJ's jurisprudence regarding companies' freedom of establishment on international civil procedure law ("Überseering im Verfahrensrecht – Zu den Auswirkungen der EuGH-Rechtsprechung zur Niederlassungsfreiheit von Gesellschaften auf das Internationale Zivilprozessrecht")
- Annotation by *Herbert Roth* (Regensburg) on a decision of the Court of Appeal Düsseldorf concerning the question of whether the debtor's identity has to be clarified – in case of uncertainties – already during the proceedings for a declaration of enforceability ("Der Streit um die Schuldneridentität im Verfahren der Vollstreckbarerklärung nach Art. 41, 43 EuGVVO")
- Annotation by *Urs Peter Gruber* (Halle) on a decision of the Court of Appeal Bamberg dealing with the question of whether proccedings for a declaration of enforceablilty according to Artt. 51, 31 et seq. Brussels Convention are suspended in case insolvency proceedings are opened with regard to the respondent's assets *abroad* ("Inländisches Vollstreckbarerklärungsverfahren und Auslandskonkurs")

- Annotion by *Stefan Kröll* (Cologne) on two decisions of the Court of Appeal Karlsruhe regarding the question of whether procedural irregularities which have allegedly occured at the place of arbitration can be raised in the proceedings for a declaration of enforceability ("Die Präklusion von Versagungsgründen bei der Vollstreckbarerklärung ausländischer Schiedssprüche")
- Annotion by *Marcus Mack* (Heidelberg) on the U.S. Supreme Court decision in *Sinochem* ("Forum Non Conveniens – Abweisung ohne Zuständigkeitsprüfung")
- Article by *Stephan Balthasar* (Munich) on the recognition and enforcement of German judgments on the Channel Islands ("Anerkennung und Vollstreckung deutscher Urteile nach *common law* auf den Kanalinseln und Verbürgung der Gegenseitigkeit")

The full contents as well as news in private international law can be found at the journal's website.

Anti-Suit Injunctions in the EU: A Necessary Mechanism in Resolving Jurisdictional Conflicts?

Nikiforos Sifakis has written an article in the latest issue (Vol. 13, Issue 2, 2007) of the *Journal of International Maritime Law* (current issue's contents not yet on the website) entitled, "Anti-Suit Injunctions in the European Union: A Necessary Mechanism in Resolving Jurisdictional Conflicts?" (*J.I.M.L.* 2007, 13(2), 100-111). A small abstract is available:

> *Discusses the use of anti-suit injunctions in the EU. Considers the categories of cases in which anti-suit injunctions are granted in the UK, including exclusive court jurisdiction clauses, arbitration agreements and no choice of forum cases. Reviews the attitude of the European Court of Justice to anti-suit injunctions. Examines the reasons for antipathy towards anti-suit injunctions in Europe.*

Comments on the US system of anti-suit injunctions. Proposes a reform of Council Regulation 44/2001.

There is also a short casenote on the US Supreme Court decision in *Sinochem Int'l Co., Ltd. v. Malaysia International Shipping Corp* by Dennis L. Bryant (*J.I.M.L.* 2007, 13(2), 89-90) in the same issue.

The full article and casenote are only available to those with a subscription to the *J.I.M.L.*

U.S. Supreme Court Hears One Case, Grants Two More, On Private International Law Issues

On Tuesday, January 9, the Supreme Court heard argument in Sinochem v. Malaysia Int'l Shipping, regarding the doctrine of forum non conveniens in U.S. Courts. The case was previewed on this site here, and the argument transcript can be found here. It provides an interesting dialogue among members of the Court regarding the efficacy and operation of the doctrine in U.S. federal courts.

On Friday, January 19, the Court granted certiorari in 05-85, Powerex Corp. v. Reliant Energy Services. The question presented in that case is whether a foreign company owned by a Canadian province and doing commercial business in the U.S. is to be treated as an organ of a foreign government, and thus entitled to have legal claims against it heard in federal rather than state court. The Court added to this review the question of the Ninth Circuit Court's jurisdiction to review a remand order by the District Court. Courtesy of the SCOTUSblog, the briefs can be found here: Petition, Brief in Opposition, Reply. Amici briefs from the government of Canada and British Columbia are expected to be filed, and it wouldn't be surprising if other sovereigns line-up as well.

On that same day, the Court also granted review in 06-134, India Permanent Mission to the United Nations v. New York City over the question whether foreign embassy properties used as diplomats' residence are immune to property taxes assessed by the local New York City government. Especially interesting is question 2 presented in the petition: "Is it appropriate for U.S. Courts to interpret U.S. statutes by relying on international treaties that have not been signed by the U.S. government and do not accurately reflect international practice because they have been signed only by a limited number of nations." The Court granted review over both questions. Again courtesy of the SCOTUSblog, the briefs can be found here: Petition, Brief in Opposition, Reply . This is also a case where one would expect numerous amici from other nations.

U.S. Supreme Court To Hear Case Concerning The Scope and Applicability of The Forum Non Conveniens Doctrine

For the first time since *Piper Aircraft Co. v. Reyno* in 1982, the United States Supreme Court will hear a case concerning the scope and applicability of the forum non conveniens doctrine when parallel proceedings are contemplated in a foreign court. In granting the petition for a writ of certiorari in *Sinochem Int'l Co., Ltd. v. Malaysia International Shipping Corp.*, No. 06-102, the Supreme Court agreed to decide "[w]hether a district court must first conclusively establish jurisdiction before dismissing a suit on the ground of *forum non conveniens*?" This question has divided the Unites States Courts of Appeals for nearly a decade, with the D.C. and Second Circuits holding that jurisdiction is not a prerequisite for a forum non conveniens dismissal, and the Ninth, Fifth, Seventh and Third Circuits holding the opposite. The decision, which should be forthcoming in the Spring of 2007, has potential importance to all non-U.S. companies who are sued in the courts of the United States for matters having little or no connection to the U.S.

The Justices selected the *Sinochem* matter as one of the nine cases that it granted review to on September 26 (out of 1,900 petitions that had been stacked up on the Court's docket over its Summer recess). The case will be argued before the Justices in January 2007.

The Order granting the Writ of Certiorari is available here; the Petition for Writ of Certiorari is available here; the Brief in Opposition to Certiorari is available here; and the Reply Brief in Support of Certiorari is available here.

Disclaimer: Charles Kotuby is an Associate in the Washington D.C. Office of Jones Day, who represents Petitioner in this matter.