

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 conveniens 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in unpublished decisions.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Of the most interesting unpublished decisions applying the actual holding in *Sinochem*, the Third Circuit has ironically moved to the forefront.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 identical 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