


Recognition of a U.S. Judgment in Brazil

I am grateful to Henry Saint Dahl, the President of the Inter-American Bar Foundation, for contributing this report. 

In *General Electric Company v. Varig S Aviação Aérea Rio-Grandense*, the Superior Court of Justice in Brazilia, Brazil allowed the recognition (*homologação*) of a US judgment issued by the New York Southern District Court. The Brazilian decision was dated November 5, 2008 but was only published on December 11, 2008.

The parties signed a contract, General Terms of Agreement, according to which Varig purchased from GE an aircraft engine. The contract had a New York choice-of-law clause. The New York judgment was declaratory and it established that General Electric was not responsible for certain malfunctioning of the engine. The American court had decided that: “a) the General Terms of Agreement entered between Varig and GE is in full force and it is applicable to the incident caused by the engine malfunction of June 7, 2000; and b) the Agreement shall be construed following the substantive law of New York.”

Varig argued that the chosen law should be stricken, as a matter of Brazilian public policy, and that the Brazilian Consumer Code (*Código de Defesa do Consumidor*) should be applied instead. In particular, Varig asserted that this was a consumer transaction and that the Brazilian Consumer Code banned clauses whereby the buyer waived any redress in instances of the seller’s negligence.

The case was complicated by a related action, against General Electric, filed in Brazil by Varig’s insurance company (Presumably the declaratory action would be used to defend against this lawsuit.)

The Brazilian court allowed recognition of the foreign judgment. It held that the Consumer Code applied internally and that it did not prevent the law chosen by the parties to operate freely. It also determined that the recognition requirements (jurisdiction, service, translations, etc.) of art. 15 of the introductory law to the Civil Code had been complied with. Finally, the court decided that the existence of related litigation in Brazil posed no obstacle to the recognition of the foreign

judgment according to art. 90 of the Code of Civil Procedure (no *lis pendens*).

This is an important case where the Brazilian court applied truly international standards to an international case. Other Latin American countries should take notice.

Priscila Sato, a Brazilian attorney at Arruda Alvim Wambier Advocacia e Consultoria Jurídica provided a copy of the text and general guidance.