

**Defending Against Foreign Nationals Suing in U.S. Courts  
For Injuries in Foreign Countries**

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The globalization of commerce is a fact of life. This phenomenon has given rise to a host of legal issues, most of which are in some state of uncertainty. One of these issues concerns the foreign citizen who has been damaged in a foreign country by a product manufactured or sold by a U.S. entity, or by a practice undertaken by a U.S. entity – and who now wishes to bring suit against the U.S. entity in a U.S. Court, rather than in his/her local court. A number of these types of claims are arising out of drugs manufactured and sold by U.S. companies, and other chemical products sold abroad (such as herbicides and fertilizers), just to mention a few areas in which this form of litigation is growing.

There are many reasons why a foreign national would wish to bring suit in a U.S. Court. Among these are the facts that the U.S. system typically provides far wider discovery than most foreign jurisdictions, the array of recoverable damages is far broader, the bases of liability may be broader, and the impartiality of the courts more certain. Some of the reasons that a claimant would wish to bring his/her claim in the U.S., however, are the very reasons a corporate defendant may well wish to keep the claim in the foreign court.

The following is a brief overview of how the doctrine of *forum non conveniens* can come into play in defending this type of claim.

1. A citizen of a foreign country may sue a U.S. citizen (an individual or a corporation) in a Federal District Court. See, Wright, Miller, and Cooper, Federal Practice and Procedure, Diversity of Citizenship, §3604. The diversity jurisdiction statute, 28 U.S.C. §1332(a)(2), provides that: “The District Courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs,...and is between citizens of a State and citizens or subjects of a foreign State.” (Emphasis added). This branch of diversity jurisdiction is usually referred to as “alienage jurisdiction.” A person with dual citizenship will not qualify for alienage jurisdiction, but will be considered a citizen of the U.S. Mutuelles Unies v. Kroll & Linstrom, 957 F.2d 707 (9<sup>th</sup> Cir. 1992).

2. In what federal district can the foreign national file suit? The general rule, and starting point for analytic purposes, is that a foreign national can bring suit in any district. Wright, Miller, & Cooper, Federal Practice & Procedure, Diversity of Citizenship § 3604. This general rule is tempered, however, by a healthy dose of forum *non conveniens*. Courts have looked more favorably upon foreign citizens bringing suit in districts that have some identifiable nexus to the litigation. For a discussion of the competing factors in this assessment, see Hadded v. Richardson-Merrill, Inc., 588 F. Supp. 1158 (N.D. Ohio 1984); De Melo v. Lederle Labs, 801 F. 2d 1058 (8<sup>th</sup> Cir. 1986); Friends for all Children, Inc. v. Lockheed Aircraft Corp., 717 F.2d 602 (D.C. Cir. 1983). In the product liability context, courts have held that such a nexus exists in the forum where the manufacturer developed produced and tested the product that caused the injury abroad. Carlenstope v. Merck & Co., 638 F. Supp. 901 (S.D.N.Y. 1986).

3. The doctrine of *forum non conveniens* is frequently used by defendants to attempt to move actions filed in the U.S. back to foreign jurisdictions, and is a key part of any defense strategy. The seminal case in this area is Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981). This case arose out of an airplane crash in Scotland that resulted in several deaths. The decedents were all Scottish citizens. The plaintiff, acting as personal representative of several of the decedents, sued the Pennsylvania-based airplane manufacturer and the Ohio-based propeller manufacturer. The suit was initially filed in a California State Court, but eventually made its way to a Pennsylvania Federal District Court. The issue of dismissal on *forum non conveniens* grounds ultimately came before the U.S. Supreme Court. The Court established the basic framework for analysis that has guided subsequent cases, and addressed specifically the recurring theme in these types of cases: the argument by the plaintiff that the more restrictive foreign law, coupled with the American interest in deterring American manufacturers from producing defective products, compels trial in the U.S. Scottish law was markedly less favorable for the plaintiffs in Piper, both substantively and procedurally, and the plaintiffs contended that this unfavorability precluded dismissal. The U.S. Supreme Court disagreed, holding that unfavorable foreign law does not, by itself, justify suit in the U.S., and stating that the plaintiffs' choice of forum carries less weight when the plaintiff is a foreign citizen suing on an injury occurring in a foreign country.

If your U.S. client is faced with a suit by a foreign citizen, arising from an injury occurring in a foreign country, Piper is where you should begin your research in an effort to shift the case back to the foreign jurisdiction.

4. The above discussion has dealt with situations in which the defendant is clearly a U.S. citizen; that is, a U.S. company manufactured the allegedly-defective product. A wrinkle occurs when the party that has committed the wrong is actually a foreign subsidiary of a domestic U.S. corporation, and the foreign plaintiff attempts to sue the U.S. parent in a federal district court. Some Courts have applied the “attribution rule” to these situations, the effect of which is to “attribute” the citizenship of the foreign subsidiary to the domestic U.S. parent, when the essence of the claim is against the subsidiary. The result, of course, is to render the claim one between citizens of foreign nations, not cognizable in a U.S. Court. Thorough discussion of application of this rule can be seen in Polanco v. H.B. Fuller Company, 941 F. Supp. 1512 (D. Minn. 1996). There, the plaintiff, a citizen of Guatemala, alleged that her brother had become addicted to glue manufactured by H.B. Fuller’s Guatemalan subsidiary, and died as a result. The Court held that the citizenship of the Guatemalan subsidiary would be “attributed” to the U.S. parent, thus making the case one between two citizens of Guatemala. The Court also found that the Guatemalan subsidiary was an indispensable party under FRCP 19, without which the case could not proceed.

It should be noted, though, that the “attribution rule” is not universally applied. See, for example, Pyramid Securities, Ltd. v. IB Resolution, Inc., 924 F.2d 1114 (D.C. Cir. 1991), criticizing the rule.