MADE IN AMERICA: LATIN AMERICAN CONSUMERS MEET THEIR MAKER

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I. INTRODUCTION ................................................................. 760

II. A HISTORICAL BACKGROUND OF CUBA'S LEGAL SYSTEM ................................................................. 761
   A. The American Influence .............................................. 761
   B. The Infiltration of Castro’s Socialist Regime ................... 762
   C. Cuba’s Current Legal System ........................................ 762

III. CONFLICTS OF LAW .......................................................... 763
   A. Establishing Jurisdiction Against Foreign Defendants ............. 763
   B. The Forum Non Conveniens Doctrine .................................. 765
   C. Choice of Law Applied In Products Liability Cases ................. 765

IV. FOREIGN SOVEREIGN IMMUNITIES ACT ................................ 766
   A. Application to Commercial Activity .................................. 766
   B. The United States and Extraterritorial Power ....................... 768

V. JOINDER OF PARTIES ......................................................... 769

VI. NONJOINDER OF PARTIES .................................................. 770
   A. Dismissal of Lawsuits Based on Application of FSIA ............... 770
   B. The Removal Statute of the FSIA ..................................... 770
      1. A goal for uniformity .............................................. 770
      2. Fraudulent joinder of parties ..................................... 771
      3. Benefits received by foreign defendants ......................... 772

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I. INTRODUCTION

In recent years, individuals living in the United States have exported various supplies to people in third world countries. In particular, many goods have been exported to Latin American countries, including Cuba. The large influx of American made products that have been
transported into these countries has given rise to the issue of liability of the American manufacturers concerning injuries to third party recipients. The area of tort law that has received great attention is the practice of products liability. Products liability law has served an instrumental part in protecting, warning, and enforcing the liability between manufacturer, consumer, and user.

Problems arise when the user, who usually is an indigent individual, suffers great injury yet does not have easy access to the American courts. In order to protect both manufacturers and users, the legislature has enacted laws that deter or eliminate the exportation of goods from the United States into these third world countries.

This article will address the issues that surround the products liability field concerning American manufacturers and international users. Specifically, this article will focus on the relations between the United States and Latin American countries. A discussion of Cuban law and liability will also be addressed in consideration of the Helms-Burton Law. A comprehensive study composed of the American manufacturers along with the remedies and protections that international users are entitled to, will encompass this analysis. Also, the issues of jurisdiction and user limitations concerning bringing an action against an American manufacturer will be discussed.

II. A HISTORICAL BACKGROUND OF CUBA’S LEGAL SYSTEM

A. The American Influence

Cuba attained liberation after the Spanish-American War in 1898 leading to a new regime that led to the creation of the Cuban legal system. The involvement of America in the War led to the adoption of many American legal concepts that were inculcated by Cuba’s emerging government. Among the many legal concepts that were adopted from the American government was the idea of the separation of powers. From the Spanish, Cuba accepted many of the concepts concerning the civil law.

2. Id.
3. Id. at 1836.
4. Id. at 1835.
After the defeat of Batista by Fidel Castro in 1959, Castro took control of Cuba and molded it to create a socialist democracy.\(^5\)

**B. The Infiltration of Castro’s Socialist Regime**

Fidel Castro’s control dramatically changed the Cuban legal system. Castro wished to mold this tiny island into a socialist democracy.\(^6\) His goal was to follow the political and legal philosophies of other successful socialist countries such as the Soviet Union.\(^7\) The ideological theory of the *socialist legality* is a set of laws that every socialist government follows.\(^8\) By studying other successful socialist countries, the legal system is created and followed in order to attain a similar legal system.\(^9\)

Seventeen years after Fidel Castro overtook the Cuban government, the first socialist constitution was adopted.\(^10\) In 1979, the socialist constitution expressed the limitations on the citizens of Cuba concerning many areas including free speech.\(^11\) The socialist theory gives the countries’ citizens the illusion of equality and freedom.\(^12\) Through this socialist regime, Castro has taken away a citizen’s rights and replaced it with an illusion of freedom. Among many of the freedoms and inhumane treatment suffered by the Cuban citizens is the quarantine of HIV positive patients.\(^13\) As stated by Debra Evenson, this quarantine follows the socialist governmental view that the masses are more important to protect than the individuals.\(^14\)

**C. Cuba’s Current Legal System**

The legal system in Cuba presents opposing parties working together to reach a common goal.\(^15\) The judicial system was reformed following the Castro regime.\(^16\) The reason for the reform of the judiciary

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5. Id.
6. Id. at 1836.
8. Id.
9. Id.
10. Id.
11. Id. at 1837.
12. Id.
14. Id.
15. Id. at 1837.
16. Id. at 1839.
system was to punish those individuals who did not comport with the ideology of the current regime. Nevertheless, corruption among officials still exists due to their immense political involvement. Contrary to belief, the judges are not forced to be members of the Communist Party.

The need for currency has forced the Cuban government to adjust the economic policy in order to foster a successful government. The business opportunities created with foreign parties has created many joint ventures in the hope of fostering a profitable government. In order to achieve this goal, the Cuban government has reformed the economic policy in order to promote the business relationship with foreign investors.

III. CONFLICTS OF LAW

A. Establishing Jurisdiction Against Foreign Defendants

It is important to choose the best forum in which to bring a lawsuit in order to further and protect the international relations between the United States and the Latin American countries. This may lead to forum shopping either by the plaintiff or the defendant. Courts usually determine the proper forum by balancing the interests and policy of the two countries. The United States Supreme Court has addressed the issue concerning choice of law on numerous occasions. In a recent decision, it was held that personal jurisdiction could be exercised against a foreign defendant who is present within the state. The courts have held that the plaintiff can bring the lawsuit into the forum that offers the best choice of

17. Id.
18. Whitlock, supra note 1, at 1837.
19. Id. at 1839.
20. Id. at 1837.
21. Id.
22. Id.
24. Id. at 778.
25. Id.
26. See Ferens v. John Deere Co., 110 U.S. 1274 (1990) (Plaintiffs bringing suit in a forum that allows the party to have and maintain a satisfactory choice of law even when the case is removed to federal court).
27. See Adolf v. A.P.I., 737 F. Supp. 1087 (D.N.D. 1990) (Canadian defendant sued for damages arising out of a conspiracy to hide the health hazards of asbestos. The court held that the plaintiffs established jurisdiction against all defendants as co-conspirators).
law. The negative repercussion to these decisions is that this promotes forum shopping.

It is still required that the defendants have minimum contacts with the forum state before the jurisdiction can be decided. The purpose of the minimum contacts requirement is to enhance the jurisdictional requirements. Among factors to consider for jurisdiction is the foreseeability of the product's use in that forum. American manufacturers may have the knowledge that international users will use the product they are creating. In this situation the manufacturer has placed themselves within the reach of the jurisdictional statute. This would offer sufficient intention for minimum contacts. Therefore, an international plaintiff could seek federal jurisdiction within the state in which the product was manufactured. The jurisdictional state is determined by where the manufacturers' headquarters are located. Where the item is manufactured is usually and where other business dealing occur are considered the manufacturers headquarters. In the event that the American manufacturer participated in a conspiracy, as to their knowledge of the defective product, jurisdiction will be granted against the members of the conspiracy. As to product liability insurers, jurisdiction will be subject to the forum in which the insured manufacturer conducted business.

29. Id.
30. Id. at 783.
31. Id.
33. Silberman, supra note 23, at 792.
34. Id. at 782.
35. Id.
36. Id.
37. Id.
39. Id. at 782.
40. Eli Lilly v. Home Insurance Co., 794 F.2d 710 (D.C. Cir. 1986). Insurer was subject to jurisdiction when the company they insured was in the forum in which they did business. See also Farmers Insurance Exchange v. Portage La Prairie Mutual Insurance Co., 907 F.2d 911 (9th Cir. 1990).
B. The Forum Non Conveniens Doctrine

The desire to limit forum shopping has led to many decisions restricting the plaintiffs from bringing suit against defendants. As in Piper Aircraft v. Reyno, the Supreme Court held forum non conveniens in order to maintain the convenient method of law. The application of American law was the best alternative as a convenient method for the defendant. The Supreme Court believed that had the forum non conveniens doctrine not been applied, international plaintiffs would have a legal basis to sue American defendants in United States courts for accidents that occurred in international countries. The application of this doctrine has been diverse. If it is believed that a party would lose the benefit of a choice of law, the courts will refuse to discharge the lawsuit based on the doctrine of forum non conveniens. When courts are aware that conflicts of law exist that may hinder a plaintiff's case, the forum will be maintained. There is a good faith need to offer an innocent plaintiff the best law applicable. Lawsuits brought by international plaintiffs still meet diverse application of jurisdictional law.

C. Choice of Law Applied In Products Liability Cases

Concerning the jurisdictional law to be applied in products liability cases, courts follow the law of the state in which the manufacturer's headquarters are located. Factors including where the item is manufactured, the regulations that are followed, and the distribution, all contribute to the applicable choice of law that the court will apply. The choice of law in the jurisdiction may also affect the barring of the lawsuit based on differing statutes of limitations and repose in each state. Courts offer diverse rulings in this area, but usually apply the statute of limitations

42. Piper Aircraft, 454 U.S. at 235.
43. Silberman, supra note 23, at 784.
44. Id.
45. Id. at 796.
46. Id. at 797.
47. Id. at 783.
49. Silberman, supra note 23, at 792.
50. Id.
that pertains to the manufacturer's state. Application of extended statute of limitations may be done to benefit a plaintiff that would otherwise lose a claim. Usually it is a resident plaintiff who is receiving the benefit of the extended statute of limitations. Courts that apply the public policy rationale and dismiss a barred claim based on the running of the statute of limitations, have an interest in punishing the manufacturer whose principal place of business is where the plaintiff brought suit. A transferred case that is moved to another federal court is required to impose the statute of limitations that the transferor courts would have to apply.

IV. FOREIGN SOVEREIGN IMMUNITIES ACT

A. Application to Commercial Activity

Jurisdiction over foreign states can be provided in the United States through the enactment of the Foreign Sovereign Immunities Act of 1976 (FSIA). The FSIA allows the United States to obtain subject matter jurisdiction over the foreign states in both the federal and state courts. Any public or commercial activity that places the foreign states in contact with the United States gives rise to jurisdiction in the United States under the FSIA. Many courts have held that when a foreign state enters into a contract, it waives the sovereign immunity and assumes the laws of the States. Immunity of foreign tortfeasors is addressed in two situations concerning the restrictive theory, which extends to public activities conducted by foreigners.

If the foreign tortfeasor is joined with another defendant, the United States dismisses the action based on the immunity clause of the

52. See Dent v. Cunningham, 786 F.2d 173 (3rd Cir. 1986).
53. Id.
55. See Van Dusen v. Barrack, 376 U.S. 612 (1964). Defendant motioned for court to apply the statute of limitations that would have been applied by the court that transferred the case to the Supreme Court.
60. H.R.REP. No. 94-1487, supra note 58, at 6613.
The exceptions provided to the foreign sovereign immunity that fall under the category of public or commercial activity are described in the FSIA. If the foreign state regularly conducts commercial activity in the state, the activity will be analyzed to determine if it is considered a regular course of conduct within the state that serves as an exception to the immunity. If the foreign corporation conducts activities within the "regular course of commercial conduct" such as state trading, then it will be considered a commercial activity, which does not qualify for the immunity. If profit is earned through the trading, it is certain to be classified as a commercial activity. This analysis is similar to the minimum contacts rationale in determining intrastate jurisdiction. Consideration must be given to whether the activity is public or private in nature also. This issue was discussed in Rush-Presbyterian-St. Luke's Medical Center v. Hellenic Republic, where a Greek national contracted with the American hospital for a kidney transplant. In deciding whether the foreign contract was commercial or sovereign, it was determined that any private person would enter into a contract in a similar situation. Medical services are customarily entered into for the benefit of private parties.

A commercial contact requires that the foreign state have substantial contact with the state. The language of the act has been considered broad. The broadness of the act has resulted in its failure to provide adequate recourse to those injured by foreign states. If an American plaintiff is affected by a foreign sovereign owned corporation that has no connection with the United States, the action is barred in the United States. Numerous cases have established that a "nexus" is required between the commercial activity in the United States and the

61. See America West Airlines, Inc. v. GPA Group, Ltd., 877 F.2d 793 (9th Cir. 1989).
63. Id.
64. H.R.REP. No. 94-1487, supra note 58, at 6614-15.
65. Id.
66. Id. at 6615.
67. American West, 877 F.2d at 574.
68. H.R.REP. No. 94-1487, supra note 58, at 6615.
69. America West, 877 F.2d at 581.
72. Ares, supra note 58, at 707.
foreign country in order for any personal injury claim to be recoverable. The nexus test is applied when a claim is brought concerning a sovereign and commercial element. Many of these cases have involved air craft accidents and American plaintiffs. Factors that are considered as creating a nexus include purchasing the product in the United States. Products that are bound for the United States are also considered to have a sufficient nexus to create a commercial activity that will allow an exception to the immunity. Courts have also applied the commercial activity exception to situations that include loss of product use. If the item affected interferes with an important function of commercial conduct that is regularly conducted by a state, the immunity is assumed not to exist. This analysis goes to the doing business test for commercial activity that also denies immunity. If a country regularly conducts business with the United States and the accident arose within the activity, the immunity does not apply.

B. The United States and Extraterritorial Power

When the United States involves itself with commercial activity in a foreign state the exception to the immunity will also apply. The involvement of the United States in the commercial activity of the foreign state that results in monetary enrichment by the foreign state is sufficient to satisfy the exception of the immunity. Yet, the misconduct of the commercial activity must have occurred in the United States. If the negligent act occurs in the foreign state, no cause of action can be brought

73. See Gemini Shipping Inc. v. Foreign Trade Org. for Chem & Foodstuffs, 647 F.2d 317 (2d Cir. 1981); Sugarman v. Aeromexico, Inc., 626 F.2d 270 (3d Cir. 1980); America West Airlines, Inc. v. GPA Group, Ltd., 877 F.2d 793 (9th Cir. 1989).

74. Id.

75. See Santos v. Comagnie Nationale Air France, 934 F.2d 890 (7th Cir. 1991); America West Airlines, Inc. v. GPA Group, Ltd., 877 F.2d 793 (9th Cir. 1989).

76. Ares, supra note 58, at 711.

77. Id.


79. Id. at 84.

80. Ares, supra note 58, at 712.

81. Id.


83. Ares, supra note 58 at 713.

based on the immunity. No exception will apply when the occurrence resulted outside the United States territory.

Another situation in which the commercial activity exception to the immunity applies is when the activity that is conducted in the foreign state directly effects the United States. Usually personal injuries are nonrecoverable under this situation even if loss will have an effect on the United States. The exception will apply as in the case involving a collision between two vessels in international waters. When the activity effects the income that directly leads to the United States, the immunity exception will extend to the United States.

The FSIA does not allow the application of the immunity concerning counterclaims or cross claims against the foreign state. When the counterclaim involves the same “transaction” in which the original claim arose, the sovereign immunity will not apply. The Federal Rules of Civil Procedure 13 is applicable in situations involving counterclaims and cross-claims.

V. JOINDER OF PARTIES

The ability to bring in a foreign state into a lawsuit is provided for in the Federal Rules of Civil Procedure 20. The Federal Rule provides that any defendant may be “jointly, severally, or in the alternative” be joined in order for the plaintiff to seek relief. The occurrence must have arisen in the same situation amongst all the defendants in order for there to be proper joinder of parties.

A defendant may also bring a third party claim against a foreign state only under the Federal Rules of Civil Procedure 14. In order to

85. Id. at 1061.
86. Id.
88. See Upton v. Empire of Iran, 459 F. Supp., 264, 266 (D.D.C. 1978). The court held that no direct effect could be found when Americans sued the country of Iran when the roof of an airport terminal collapsed killing several Americans.
90. Id.
93. Id. at 168.
94. FED. R. CIV. P. 20.
95. Id.
96. Id.
97. FED. R. CIV. P. 14.
properly bring a third party claim the third party plaintiff must have a claim for contribution or indemnity and must involve one of the foreign sovereign immunities enumerated in the FSIA. Establishing these two elements allows a third party plaintiff to implead a foreign state properly into the United States for litigation in the lawsuit. If the Federal Rules of Civil Procedure are not properly followed the claims may be dismissed.

VI. NONJOINDER OF PARTIES

A. Dismissal of Lawsuits Based on Application of FSIA

The enactment of the FSIA has led to the dismissal of many cases being removed from state to federal courts. In this instance, the foreign state defendant can seek a dismissal based on forum non conveniens. This is an option that is not available in a select number of state courts. The removal based on forum non conveniens has led to the nonjoinder of otherwise liable foreign state defendants. The FSIA’s statute concerning the removal of lawsuits are allowed when requested by third party defendants of foreign states. The purpose of the statute was to enhance the uniformity of federal courts involving foreign state parties. When no foreign defendant is involved in lawsuits, the dismissal is permitted under the theory of forum non conveniens.

B. The Removal Statute of the FSIA

1. A goal for uniformity

In order to achieve the goal of uniformity amongst the federal courts, the removal statute of the FSIA eliminated a right for trial with a jury, it also eliminated a jurisdictional amount, and included a removal authority. Exercising federal court jurisdiction over foreign defendants is

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98. Ares, supra note 58, at 718.
100. Ares, supra note 58, at 718.
103. Ares, supra note 58, at 719.
104. Nolan, 919 F.2d at 1061.
105. Ares, supra note 58, at 720.
106. Id.
addressed in the provision of 28 U.S.C. Section 1441 (d). That section states that "any civil action brought in a State court against a foreign state" is allowed removal to another district court where the lawsuit has been brought. The request for removal of an action removes the entire suit, including those involving multi-party defendants who wish to keep the lawsuit in the state court. The drafters intended the foreign defendants to have the opportunity to remove in order to promote uniform law in conformity with the other states. The primary purpose is to develop consistent laws and results concerning lawsuits that involve foreign states and the United States. This expansive interpretation of laws has led to the placement of powers upon the federal courts in reaching consistent laws that will not conflict with state law.

The removal of claims to federal court is interrelated with pendent party jurisdiction. The FSIA has been affirmed to authorize pendent party jurisdictions in order to reach their intended purpose of uniformity even when only minimal diversity would exist. The relaxed standards applied by the FSIA removal statute that has also been applied when a foreign plaintiff is involved, has led to the parties using "non" good faith methods of keeping a claim in state court. Certain methods used have involved the joinder of nondiverse parties in order to prevent removal based on diversity. Foreign states that are liable have also been left out of lawsuits in order to prevent removal pursuant to the FSIA.

2. Fraudulent joinder of parties

Fraudulent joinder of parties is addressed when a party improperly seeks to defeat the existence of federal jurisdiction. The FSIA removal statute does not involve this issue which pertains to the removal concerning

108. Id.
110. Id.
112. See Arango v. Guzman Travel Advisors Corp., 621 F.2d 1371, 1376 (5th Cir. 1980).
113. Id.
115. Ares, supra note 58, at 726.
116. Id.
diversity situations. The invalid creation of jurisdiction in order to remove a case to federal court is regarded as collusive joinder, which eliminates federal jurisdiction when joinder is improper. The most common example when improper jurisdiction through collusive joinder exists is when a party names a beneficiary from the state to handle the action and creates jurisdiction. The reason for the appointment must be determined in order to establish whether diversity has been improperly granted. The federal courts require that the moving party claiming collusive joinder provide evidence showing that removal of jurisdiction has been improperly provided.

3. Benefits received by foreign defendants

The involvement of a foreign state in tort litigation within the United States greatly affects the way a lawsuit is challenged. The Foreign Sovereign Immunities Act allows plaintiff's the ability to bring in a foreign tortfeasor through it's exceptions and limits. Yet, once the foreign state defendant is within the United States boundaries, the foreigner is given many opportunities to remove to federal court and reach a more relaxed federal court system. The ability to remove gives the defendant an easier opportunity to defensive actions that will either reduce their liability or eliminate the claim brought against them.

VII. CONSTITUTIONAL ISSUES CONCERNING INTERNATIONAL LAW

A. Maintaining Uniformity in Law between the Countries

Constitutional issues relating to the rights of international plaintiffs and defendants extend to these parties through application of United States constitutional law. In order for a state to apply their local law in international matters, the law must not violate any public international law. This theory is applied in order to prevent conflicting laws between

118. Verlinden, 461 U.S. 480 at 491-93.
123. Ares, supra note 58, at 742.
124. Id.
126. Id. § 9.
the United States and foreign countries. Uniformity of law is the primary concern of the United States in overseeing proper application of law. The choice of law in the states has been addressed in the Second Restatement. The Second Restatement has stated that "a court may not apply the local law of its own state to determine a particular issue unless such application of this law would be reasonable in the light of the relationship of the state and of the other states to the person, thing, or occurrence involved". In products liability cases, a state applying its own damages and liability laws may be forced to forfeit their jurisdictional requirements in order to maintain uniformity in the international law realm.

B. Constitutional Protection for International Parties

Further, the constitutional protections will be extended to international parties when challenged. When international parties have argued jurisdiction, the Due Process Clause of the Fourteenth Amendment has been regarded. Courts have held that due process is extended to any foreign defendant as it would be to any American defendant.

VIII. THE HELMS-BURTON ACT

A. An Act to Promote Democracy in Cuba

One way that the United States has attempted to apply constitutional issues to international incidences is regarded in the Cuban Liberty and Democratic Solidarity Act of 1996. Also known as the Helms-Burton Act, the United States has attempted to provide for extraterritorial control of foreign countries. The primary goal in enacting the Helms-Burton Act was to prevent the investment of business in Cuba

128. RESTATEMENT (THIRD) supra note 125.
129. Id.
132. See Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1984). The Court held that the international defendant had due process rights that were equal to those of any American citizen.
and stop foreign trade. The United States has sought to liberate the Cuban people through promoting a democratic change in Cuba. The supporters of the Act hope that through the prevention of investment and trade with Cuba, the repercussions will affect the government leading to the downfall of the Castro regime.

A controversial battle was waged before the signing of this Act on March 12, 1996. What prompted President Clinton to sign the Act into law was the killing of four individuals, two Americans and two Cubans over international waters by the Cuban military.

B. The Protection of United States Nationals

The Helms-Burton Act attempts to enforce their goals of protection and change through restricting trade thereby affecting the Cuban economy. Through the “Protection of Property Rights of United States Nationals”, the Helms-Burton Act states that any violation within the provisions of the Act will lead to civil liability. Liability will be imposed when a commercial activity is conducted affecting property that Castro obtained from Cuban-American citizens during the revolution. This provision offers a private right of action that can be enforced by any American national against foreign investors and businesses. Regular commercial activity by any foreign corporations or individual is subject to liability based on their investments within Cuba. Extraterritorial powers are given to the United States through the application of this provision.

136. See id.
138. On February 23, 1996 four men were killed while flying over international waters. They were on a mission for Hermanos Al Rescate when Cuban missiles were shot hitting the two planes. Two were Cuban Americans and two were Cuban immigrants. It has been proven that the two planes were not flying in Cuban territory.
141. See § 302(a)(1), 110 Stat. at 815.
142. See § 302, 110 Stat. at 815-17.
144. See id.
If a foreign entity or individual is found to be "trafficking" business involving property confiscated from American nationals within Cuba, they will be liable.\textsuperscript{145} This involves innocent parties as well.\textsuperscript{146} Concerning money made from a business venture in Cuba; the bank that holds the money may be liable under the provision.\textsuperscript{147} Any company may be liable under Article III even when their involvement is slight and indirect.\textsuperscript{148}

C. Constitutional Issues Arising From the Enactment

When the Act was enacted, many opponents argued that it violated the Due Process Clause of the Fourteenth Amendment towards international defendants.\textsuperscript{149} The Due Process Clause is meant to protect foreign defendants from any jurisdictional applications that may be regarded as unjust and unequal.\textsuperscript{150} The broad language of the provision has stimulated the due process argument.\textsuperscript{151} In particular, Article III, regarding the implication of civil liability, was suspended because of the possible violation of the Due Process Clause.\textsuperscript{152} President Clinton chose to suspend the enforcement of Article III based on the application of civil liability to all foreign parties outside of the United States jurisdiction.\textsuperscript{153} This American made law was forcing an entire world to be subject to liability if they violated the provisions. Through the enforcement of Article III, the United States would be extending their powers beyond their limit.\textsuperscript{154}

Due Process challenges by foreign defendants arise in matters concerning personal jurisdiction.\textsuperscript{155} The application of the Due Process


\textsuperscript{146.} Department of State, Guidelines Implementing Title IV of the Cuban Liberty and Democratic Solidarity Act, 61 Fed. Reg. 30,655-56 (1996).

\textsuperscript{147.} Sumner, supra note 137, at 920, citing, Matias F. Travieso-Diaz, Why Lawyers Love the Cuba Bill, J. COMM., Mar. 18, 1996, at 6A.


\textsuperscript{150.} U.S. CONST. amend. V.

\textsuperscript{151.} Sumner, supra note 149, at 944.


\textsuperscript{154.} Sumner, supra note 149, at 914.

\textsuperscript{155.} Id. at 923.
Clause restricts Article III of the Helms-Burton Act regarding the extraterritorial policies against foreign defendants. Certain countries have responded to the United States extraterritorial policies by enacting laws that prevent the United States from forcing their discovery and enforcement laws. Such blocking statutes protect the citizens of the country from United States enforcement orders and judgment. The Supreme Court has held that blocking statutes do not bar the United States from enforcing foreign citizens from supplying information that is requested concerning extraterritorial cases. Although a foreign citizen will face liability in their home country, the United States is still entitled to enforcement of their orders and judgments.

D. Blocking Statutes: Methods to Deter the Act

Mexico along with Cuba and other nations has created blocking statutes in order to defer the Helms-Burton Provision of Article III. The effect of these blocking statutes will definitely prevent the Helms-Burton Act from achieving its goals. In particular, Canada revised their blocking statute when the Helms-Burton Act was enacted. The Foreign Extraterritorial Measures Order (FEMO) bans any Canadian individual or corporation from adhering to the Helms-Burton Act. The FEMO interprets any legislation by the United States that interferes with the "trade or commerce between Canada and Cuba" to be extraterritorial. The application of this statute severely limits the United States' extraterritorial power.

156. Id. at 944.
159. Societe Nationale Industrielle Aerospatiale v. United States District Court for the Southern District of Iowa, 482 U.S. 522, 543-46 & n.29 (1987). A French blocking statute was brought before the Supreme Court which held that it did not affect the United States order to present evidence in a case involving international parties.
160. BORN & WESTIN, supra note 158.
162. Sumner, supra note 149, at 958.
165. Id. at 612.
E. Extraterritorial Control: Jurisdiction Over Foreigners

As a federal law, the Helms-Burton Act is entitled to subject matter jurisdiction over foreign countries. The Act’s intent is clearly stated through congressional notes as being extraterritorial. Due process is still applied in order to prevent unreasonable application of jurisdiction. Subject matter jurisdiction is determined by measuring the minimum contacts of the foreign defendant with the United States. In order to establish minimum contact, the contact between the foreign defendant and the United States must be reasonable and the relationship of the action that has arisen must be sufficiently related to the contacts. A defendant who is brought into the lawsuit for indirect association with the Helms-Burton violation can argue lack of personal jurisdiction based on the lack of sufficient and reasonable contact. This argument will prevent the application of personal jurisdiction based on the lack of minimum contacts between the defendant and the United States.

The long and powerful hand that the United States seeks to extend over foreign nations will have to be routinely examined in order to maintain harmonious foreign policy. Through the Helms-Burton Act, the United States is exercising a power that is not welcomed and will be regarded with animosity. The Helms-Burton Act allows any foreign manufacturer that has dealt with Cuba to be liable to any plaintiff who has been injured. Based on their violation any plaintiff may bring suit against a defendant supplying them with subject matter jurisdiction and being reassured that personal jurisdiction will be met through the minimum contacts analysis. Although reaching the defendant may be a struggle if blocking statutes exist, the courts will certainly find a way to reach an international tortfeasor pursuant to the Act.

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166. Sumner, supra note 149, at 947.
167. Id.
168. Id.
170. Id. at 319.
171. See §302(a), 110 Stat. 814.
172. Id.
173. Sumner, supra note 149, at 934.
174. Id. at 172.
175. Id. at 159.
IX. WHAT TIME LIMITATIONS APPLY?

A. Promoting Effective and Speedy Claims

Statutes of limitations and repose were designed in order to protect defendants from claims that no longer exist.\(^\text{176}\) If a claim has outlived the necessary time, the plaintiff no longer has a basis to bring the suit.\(^\text{177}\) The purpose of enforcing statute of limitations is to protect the availability of evidence, and prevent the loss and contamination of witnesses.\(^\text{178}\) A plaintiff is not left unjustly without recourse if he or she is unable to timely bring about the cause of action.\(^\text{179}\) The statute of limitations will be tolled in the event that a good faith reason exists for the inability to bring suit.\(^\text{180}\) In this situation the statute of limitations is suspended until the plaintiff is fully capable of bringing suit.\(^\text{181}\)

B. Service of Process to Foreign Defendants

Service of process can significantly affect the statute of limitations. The statute of limitations is suspended when the defendant who is an individual is out of the state.\(^\text{182}\) In the event that the defendant is a corporation who is unable to be served either through mail or an agent the statute of limitations does not toll.\(^\text{183}\) The Hague Convention on Service Abroad has prevented service of process through mail for certain countries.\(^\text{184}\)

1. The impact of the Hague Convention

The Hague Convention on Service Abroad gives countries the option to protest service of process by mail.\(^\text{185}\) The foreign corporations

\(^{176}\) Leslie Blankenship, Comment, For Whom the Statute Tolls-The Statute of Limitations as Applied to Foreign Defendants in Countries which do not Permit Service by Mail, 27 SANTA CLARA L. REV. 765 (Fall 1987).

\(^{177}\) Id.


\(^{179}\) Blankenship, supra note 176, at 766.

\(^{180}\) Id. at 765.

\(^{181}\) Id.

\(^{182}\) Id. at 766.

\(^{183}\) Id.


within the countries that object to the service of process by mail take the position of the objecting country. If the foreign corporation cannot be served by mail no other statutory service is available.

2. Tolling Statutes: Non-Hague Convention Countries

Countries that do not follow the Hague Convention on Service Abroad are subject to different tolling requirements. As stated in Coons v. American Honda Motor Co. of Japan, when a foreign corporation does not have an agent to accept service of process within the United States and does not have a business within the state, the statute of limitations is indefinitely suspended. This products liability case was brought against the American Honda Company and the Honda Company of Japan. Because the American Honda Company had business within the state, the statute did not toll, yet the Honda Company of Japan did not satisfy the dismissal requirements based on the tolling of the statute of limitations. It has continuously been held that a foreign company that has no agent to accept service of process and does not accept service of process by mail will be subject to suit indefinitely.

C. Tolling Avoidance: Appointment of Agent

A foreign corporation can avoid the indefinite possibility of a lawsuit by appointing an agent within the state. As in California, if a foreign corporation files with the Secretary of State providing an agent who can accept service of process the indefinite liability no longer exists. In order for service of process to be effective, compliance with the Hague Convention on Service of Process Abroad and non-residency of the foreign corporation is required. This statute concerning the service of process protects both the plaintiff and any foreign defendant. As in California,

186. Id.
188. Blankenship, supra note 176, at 774.
189. 176 N.J. Super. 575, 424 A.2d 446 (1980). The Supreme Court of New Jersey held that since the company had not assigned an agent and did not have a place of business within the United States, the statute of limitations was tolled indefinitely.
190. Id.
191. Id.
192. Blankenship, supra note 176, at 774.
193. Id. at 781.
194. Id.
195. Id.
196. Id. at 780.
the appointment of an agent would promote the reputation of the foreign corporation as dependable and trustworthy.\textsuperscript{197} The foreign corporation appointment represents care regarding their responsibilities and service to their customers.\textsuperscript{198}

X. ALTERNATIVE METHODS TO TRIAL

The influx of lawsuits has led to the flooding of cases that appear before the court system. With this increase in lawsuits, judges, lawyers, and clients have sought to find an easier method of resolving disputes in an economically sound way both in time and money. Going to trial is not always the most beneficial means of resolving a dispute. If both parties wish to lessen the publicity and reach an adequate and timely settlement concerning the dispute, alternatives are available that will be in the best interest of both parties. An analysis of alternative methods to resolution can be chosen by the parties or ordered by the court in the hopes of reaching a resolution without going to court.

A. An Analysis of Japan's Alternative Dispute Methods

One foreign country that has developed alternative methods of dispute resolution is Japan.\textsuperscript{199} Among the alternative methods are reconcilement, chotei, and conciliation.\textsuperscript{200}

1. Reconcilement

Reconcilement requires that both parties contemplate their situation in the relationship along with their goals.\textsuperscript{201} This method compels the parties to attend negotiations in order to achieve satisfactory resolutions that will benefit both parties.\textsuperscript{202} The resolution guarantees that both parties will mutually meet an end result.\textsuperscript{203} This extrajudicial action promotes a solution that is in the best interest of the parties.\textsuperscript{204}

\textsuperscript{197} Id. at 786.
\textsuperscript{198} Blankenship, supra note 176, at 774.
\textsuperscript{199} Wendy A. Green, Comment, Japan's New Product Liability Law: Making Strides or Business as Usual?, 9 TRANSNAT'L LAW. 543, 579 (Fall 1996).
\textsuperscript{200} Id.
\textsuperscript{201} Marcy Scheinwold, Comment, International Products Liability Law, 1 TOURO J. TRANSNAT'L L. 257, 258 (1988).
\textsuperscript{203} Scheinwold, supra note 201, at 279.
\textsuperscript{204} Id.
2. Chotei

Chotei places the parties before a committee that is designated to attend to the dispute.\textsuperscript{205} The committee promotes a compromising agreement that will deter litigation.\textsuperscript{206} Once an agreement is met, it is placed in writing, which will result in a final judgement.\textsuperscript{207} The parties themselves solicit a committee, but one may be appointed by the courts.\textsuperscript{208} If the parties fail to reach a settlement, the dispute fails and is sent to the court system.\textsuperscript{209} Once the dispute returns to the court system the committee can make suggestions that will help in reaching a just settlement.\textsuperscript{210}

3. Conciliation

The alternative dispute resolution method of conciliation provides a non-judicial approach to settling common claims.\textsuperscript{211} Disputes are resolved by both parties reaching a unanimous solution.\textsuperscript{212} This method of dispute resolution is the most common and the most economic.\textsuperscript{213} Usually the parties seek conciliation before litigation begins, but it may also be requested by the court in order to promote a settlement.\textsuperscript{214} Conciliation most resembles the arbitration and mediation methods of resolution.\textsuperscript{215}

Through the adoption of alternative resolution disputes, Japan has promoted opposing parties to come together and reach a settlement. These alternative dispute resolutions work best in disputes involving domestic and employment issues.\textsuperscript{216} The use of these methods have been incorporated between corporations and injured plaintiffs in products liability claims, yet

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206. Scheinwold, supra note 201, at 279.

207. Id.


209. Green, supra note 199, at 581.

210. Scheinwold, supra note 201, at 279.

211. See supra note 205.

212. Id.

213. Green, supra note 199, at 581.

214. Id.

215. Scheinwold, supra note 201, at 279.

216. Id. at 280.
\end{enumerate}
\end{small}
they are less efficient based on the unequal bargaining power of large corporation and the powerless plaintiff.217

B. Benefits of Adopting Alternative Methods of Dispute Resolution in Latin American Countries

Through the adoption of these alternative methods of dispute resolutions, Latin American countries would also be able to promote settlements between tortfeasors and plaintiffs without saturating the courts. Claims involving products liability would be more efficiently resolved with less time and money expounded by both parties. The corporation will be absolved of liability quickly with little damage to their reputation and the plaintiff will receive their settlement in less time if these alternatives were implemented.218 Adoption of these methods would certainly be a benefit to all the parties involved from the plaintiff and defendant to the court system.

XI. CONCLUSION

Claims brought on behalf of American plaintiffs require compliance of many conditions. Laws and statutes such as the Foreign Sovereign Immunities Act and the Helms-Burton Act place many provisions upon both American parties as well as foreign defendants. In order to maintain a harmonious foreign relationship between the United States and foreign countries, issues concerning the constitutionality and fairness of these Acts must be considered. The United States often finds itself torn between seeking to protect its citizens from foreign tortfeasors and maintaining a stable relationship with international corporations.

Consequently with the desire of promoting international harmony comes the determination of which choice of law is best applied to the situation. Choosing the best forum in which to bring the lawsuit will aid in protecting the relations between the United States and the foreign country that is brought on the products liability charge. The primary goal of preventing forum shopping is a consideration that must be deterred by the judicial system through legislation. By balancing the interests of both countries a proper forum can be attained.

Products liability law is an area of law that is constantly changing. With change comes knowledge and the need to attain a fair and equitable means for plaintiffs to achieve just resolution while maintaining a defendant’s opportunity to receive a fair trial. As lawyers, judges, and

217. Id.
218. Id.
students of law, it is up to these individuals to learn and apply knowledge that will meet the best interests of everyone involved.