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SCOTUS Declines to Decide Missouri Corporation's Question of International Comity and State Law

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International comity has long sat at the center of U.S. foreign relations law, governing how U.S. courts approach conflicting foreign laws, foreign judgments, and abstention. However, evaluation of international comity principles is often based in federal or international law. But what happens when international comity needs to be applied to a state law claim? Last year, the U.S. Court of Appeals for the Eight Circuit sought to clarify this question, finding international comity principles do not require dismissal of a state action based in Missouri common law tort claims. While many hoped to see this issue reviewed by the U.S. Supreme Court, the writ for certiorari was denied on February 28. Now, the implications of the Eight Circuit's decision may remain the standard moving forward.

On August 1, 2024, the Eighth Circuit denied summary judgment and dismissal of Missouri state law tort claims brought on behalf of Peruvian citizens.[1] The action began in 2007, when Sister Kate Reid and Megan Heeney, acting as next of friends, filed numerous tort lawsuits in state court, alleging that Peruvian citizens, who were children at the time of the harm, were exposed to hazardous toxic emissions from a smelting and refining complex in Peru.[2] The complex was owned by the Peruvian affiliate of Doe Run Resources Corp. (Doe Run), a subsidiary of The Renco Group, Inc. (Renco) — both named defendants in the case.[3]

After the consolidation of 40 cases and an additional 1,420 individual plaintiffs, the case was removed to federal court where the Peruvian nationals claimed "decision making by Doe Run executives in the United States exposed plaintiffs to lead poisoning and caused them to suffer persistent and irreversible cognitive impairments."[4] The corporate defendants moved for summary judgment, arguing Peruvian law should apply due to the U.S.-Peru Free Trade Agreement (PTPA or TPA), and calling for a dismissal based on international comity.[5] The district court denied the motion to apply Peruvian law and the dismissal.

Refusing to reach the merits of a summary judgment motion, the district court certified its choice-of-law ruling for interlocutory appeal. The Eighth Circuit accepted and on appeal evaluated three major questions: (1) Whether the TPA required dismissal; (2) Whether traditional comity factors required dismissal; and (3) Whether extraterritoriality principles warranted abstention.[6]

First, the Eighth Circuit found a plain reading of Chapter 18.4 of the TPA, which dictates the enforcement of foreign environmental laws, did not require dismissal as "[t]he plaintiffs' specific claims and methods for relief

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[those based in negligence under Missouri state law] are not explicitly addressed by the TPA, which contemplates more traditional mechanisms for environmental enforcement."[7] Second, the Court reasoned prospective comity did not apply in this circumstance as neither the U.S. State Department nor the Peruvian government submitted positions in the case.[8] As a result, the traditional comity factors, requiring a showing of foreign or domestic interest in resolving the suit, could not be met.[9] Finally, the Eighth Circuit distinguished the case from SCOTUS' decision in *Nestlé USA, Incorporated v. Doe. Nestlé* itself established a two-step framework for analyzing extraterritoriality issues, and applied this framework to determine whether foreign national plaintiffs could hold a domestic corporation liable under the Alien Tort Statute (ATS), 28 U.S.C. § 1350.[10] But the Eighth Circuit distinguished *Nestlé* by noting state law, not a federal statute, governed the Peruvian nationals' dispute. Additionally, the actions complained of in *Nestlé* occurred overseas.[11] These actions were in stark contrast to the argument that Doe Run and Renco should be liable for their executive decisions made in the U.S.[12] As such, the Eight Circuit affirmed the judgment of the district court.

The corporate defendants put in the bid to the U.S. Supreme Court in motion, arguing in their petition for writ of certiorari that the Eighth Circuit's decision "provides an easy end run around *Nestlé*" allowing plaintiffs to "recast any extraterritorial claim … as a state-law tort claim to sue in the United States."[13] In response, the Peruvian nationals argued the Eighth Circuit's reasoning is sound as applied, and because defendants forfeited defenses such as *forum non conveniens* early on, the unique interlocutory posture of the case makes it so that "few (if any) other litigants will take the same approach…."[14] In support of the corporate defendants' certiorari petition, Troutman Pepper Locke's Elizabeth Holt Andrews filed an amicus brief on behalf of Professor Samuel Estreicher, a law professor at NYU and one of the nation's foremost experts on the law of international comity. The amicus brief set forth a proposed theoretical framework drawn from Professor Estreicher's research and published work in this field.

Now that the Supreme Court has decided against taking the case, *Reid v. Doe Run Resources Corporation* and the Eight Circuit's decision provides an interesting application of international comity, extraterritoriality principles, and the TPA to state common law tort claims.

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[1] *Reid v. Doe Run Res. Corp.*, 110 F.4th 1049 (8th Cir. 2024).

[2] *Id.* at 1052.

[3] *Id.*

[4] *Id.*

[5] *Id.* at 1053.

[6] *Id.* at 1053–55.

[7] *Id.* at 1054.

[8] *Id.* at 1054–55.

[9] *Id.*

[10] *Nestlé USA, Inc. v. Doe*, 593 U.S. 628 (2021).

[11] *Reid*, 110 F.4th at 1055.

[12] *Id.*

[13] Petition for a Writ of Certiorari at 25, *Reid v. Doe Run Res. Corp***.,** No. 23-1625 (Nov. 27, 2024).

[14] Brief in Opposition for Respondents at 2, *Reid v. Doe Run Res. Corp***.,** No. 23-1625 (Jan. 29, 2025).

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