

How Corporate Counsel Can Avoid Common Pitfalls In International Litigation

Location:

Chadbourne & Parke LLP
30 Rockefeller Plaza
(between 5th and 6th Avenues)
36th Floor
New York City

Date:

June 10, 2010

Time:

4:00 pm - 6:00 pm (with Cocktail Reception to follow)

Opening Remarks:

Barbara Levi, Asst. General Counsel – Corporate, Unilever
Allison B. Tomlinson, Regional Counsel, Gensler

Moderator:

Thomas N. Pieper, Counsel, Chadbourne & Parke LLP

Presenters:

Sara L. Peterson, Principal Counsel & Manager of Insured Litigation, Bechtel Corp.
Oliver J. Armas, Partner, Chadbourne & Parke LLP
John Fellas, Partner, Hughes Hubbard & Reed LLP

OUTLINE

- 3:30 pm Registration**
- 4:00-4:05 Opening Remarks**
Barbara Levi, Asst. General Counsel – Corporate, Unilever
Allison B. Tomlinson, Regional Counsel, Gensler
- 4:05-4:10 Introduction to Topics**
Thomas N. Pieper, Counsel, Chadbourne & Parke LLP
- 4:10-5:40 Presentations and Panel Discussion**
Sara L. Peterson, Principal Counsel and Manager of Insured Litigation,
Bechtel Corp.
Oliver J. Armas, Partner, Chadbourne & Parke LLP
John Fellas, Partner, Hughes Hubbard & Reed LLP

Things To Consider When A Dispute Arises

- Strategic considerations
 - Resolving a business dispute and saving a business relationship vs. litigating
 - Beware of competing fora
 - Parallel proceedings and the race to the courthouse
 - Anti-suit injunction from a U.S. court are not an automatic remedy
 - International res judicata effects
 - Foreign opponent may move for *forum non conveniens* dismissal of U.S. lawsuit
 - Beware of enforcement issues before commencing or defending a lawsuit
- Beware of foreign rules and procedures: Don't assume U.S. style rules and practice will apply
 - Extremely short deadlines that often cannot be extended
 - No e-filing
 - Extensive pleadings (including most of the evidence)
 - Authentication issues (originals/certified copies, apostille, notarizations, translations, etc.)
 - Confidentiality considerations
 - Don't confuse with privacy
 - Local co-defendant or adversary may have obligation to disclose (different level of "materiality" under foreign law)
- Building an international team
 - The role and image of in-house counsel in different countries (including gender and other cultural issues)
 - Identify, select, retain, and properly communicate with outside counsel
 - Power of attorney issues
 - Proper reporting to client and rest of team
 - Billing issues (frequency; using monthly bills as a case management tool)

- Ensuring that everyone gets the full picture: management, workforce on the ground, and outside counsel
- Maintaining consistency worldwide
- Maintaining the privilege
- Translating words and concepts: more than a language issue
- Proper interactions with the court
 - The lack of electronic dockets may require constant "policing" of the case
 - Familiarity with court / court personnel, yet personal integrity (FCPA risks)
- Preservation and Presentation of Evidence
 - Document retention
 - Documents vs. witnesses
 - Expert witnesses: independent, court certified, or party-appointed?
 - Discovery — or not
 - You may get it, even if you don't want it (28 U.S.C. § 1782)
 - You may not get it, even if you want it (proper planning required)

Things To Consider In Minimizing The Risk/Impact Of Future Disputes

- Make sure your dispute resolution clause is well-drafted and unambiguous
 - Identify your most likely position: breaching vs. non-breaching party
 - Arbitration and forum selection clauses
 - Choice of law provisions / public policy exceptions
- Managing political risk
 - investment treaty planning
 - political risk insurance
- Managing insurance coverage vis-à-vis lawsuits and lawyers outside the US
 - Are you covered?
 - How to deal with local insurers?

5:40-6:00 Q&A

Questions can also be submitted online.

6:00 - 7:00 Reception