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## Case Digest

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# CASE DIGEST

This *Case Digest* provides brief analyses of cases that represent current aspects of transnational law. The Digest includes cases that apply established legal principles to new and different factual situations. The cases are grouped in topical categories, and references are given for further research.

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### I. Jurisdiction

#### ARTICLE III OF THE UNITED STATES CONSTITUTION DOES NOT GRANT CONGRESS THE POWER TO EXTEND UNITED STATES COURTS' JURISDICTION OVER SUITS BY FOREIGN PLAINTIFFS AGAINST FOREIGN DEFENDANTS

Plaintiff Verlinden B.V., a Dutch corporation with its principal offices in Amsterdam, the Netherlands, sued defendant Central Bank of Nigeria for anticipatory breach of a contract under which, in return for payment by way of an irrevocable letter of credit, the plaintiff supplied defendant with cement. The plaintiff asserted that the court had jurisdiction under the Foreign Sovereign Immunities Act of 1976 (FSIA). Although the court agreed that as a foreign instrumentality the defendant fell into the category of parties contemplated by the FSIA, the court concluded that it lacked jurisdiction over the action because, even though the legislation and legislative history were inconclusive regarding the intent of Congress to grant foreign plaintiffs the right to sue under the FSIA, Article III of the United States Constitution did not provide Congress with authority to extend the jurisdiction of the United States courts to suits between aliens. The court first examined the Article III clause extending jurisdiction over diversity actions, and concluded that this clause did not provide for suits between aliens. The court then considered the next clause of Article III granting the courts jurisdiction over cases "arising under" federal law. The court found that three categories had

been recognized under this phraseology, and Verlinden's suit against The Central Bank of Nigeria fit into none of these categories. Finally, the court considered the broader principles underlying the federal courts and the structure of Article III, clause 1, and concluded that the "arising under" language could not logically be extended to grant jurisdiction. *Significance*— *Verlinden* significantly limits federal court jurisdiction by holding that Congress does not have the power to extend jurisdiction to suits between aliens. *Verlinden B.V. v. Central Bank of Nigeria*, 647 F.2d 320 (2d Cir. 1981), *cert. granted*, 50 U.S.L.W. 3528 (U.S. Jan. 11, 1982) (No. 81-920).

**UNDER FEDERAL RULE OF CIVIL PROCEDURE 37(B), THE COURTS HAVE THE POWER TO IMPOSE SANCTION OF PERSONAL JURISDICTION WHEN A PARTY FAILS TO COMPLY WITH DISCOVERY ORDERS**

Respondent-plaintiff Compagnie des Bauxites de Guinée (CBG), a Delaware corporation forty-nine percent of which is owned by the Republic of Guinea, brought suit in the Western District of Pennsylvania seeking indemnity from a group of insurers for business interruption losses resulting from mechanical failure, an event which CBG claimed was covered by its insurance contracts with the defendants. The defendants asserted that personal jurisdiction was lacking, and CBG sought to take discovery in order to establish proof of personal jurisdiction. Upon finding that the defendants had failed to comply with discovery orders, the district court imposed a sanction of jurisdiction pursuant to Federal Rule of Civil Procedure 37(b). The Third Circuit Court of Appeals affirmed, putting itself in direct conflict with the Fifth Circuit with regard to the courts' power under Rule 37(b). On appeal to the Supreme Court, Justice White, speaking for the majority of the Court, affirmed the Third Circuit's holding. The Court first distinguished personal jurisdiction from subject matter jurisdiction, stating that the latter is dependent upon power bestowed by Article III of the Constitution, and thus not connected to action by parties during the lawsuit, while the former is a due process requirement and subject to the "traditional notions of fair play and substantial justice." Because this right is individual, it can be waived, according to the Court. Citing the analogous situation in which a party loses his right to object to personal jurisdiction under Rule 12(h)(1), the Court found that no due process violation occurs in a sanction under Rule 37(b) consisting of a finding of personal jurisdiction, so long as the sanction in the par-

ticular fact situation was "just" and specifically related to the particular claim which was at issue in the order to provide discovery. Finding these two criteria met, the Court upheld the Third Circuit decision. *Significance*—Under Rule 37(b) of the Federal Rules of Civil Procedure, a court can impose a sanction of personal jurisdiction over a party who fails to comply with discovery the purpose of which is to discern whether personal jurisdiction is present. *Insurance Corporation of Ireland, Ltd. v. Compagnie des Bauxites de Guinea*, No. 81-440 (U.S. June 1, 1982).

**FOREIGN SOVEREIGN IMMUNITY—A STRICT CONSTRUCTION OF THE CONCEPT OF INSTRUMENTALITIES UNDER THE FOREIGN SOVEREIGN IMMUNITIES ACT**

The plaintiffs, United States citizens, brought suit against the Republic of Ireland and two of its instrumentalities under the Foreign Sovereign Immunities Act of 1976. The plaintiffs operated an unsuccessful plant for the production of cosmetic containers in the Republic of Ireland. According to the plaintiffs, the Republic, through its two instrumentalities, Udaras na Gaeltachta (UG) and the Industrial Development Authority of Ireland (IDA), made false representations to induce the plaintiffs to set up their business in Ireland and to divulge certain proprietary information, interfered with their financial relationship with the business and with their expectation of financial gain, and finally, that the Republic took their property in violation of international law. Granting the Republic of Ireland's motion for summary judgment, the District Court for the District of Columbia held that although the Republic did exercise some managerial controls over UG and IDA, because the two instrumentalities were independent corporate bodies with the power to sue and be sued, and the Republic had no actual involvement in the matters of the suit, the Republic of Ireland was not liable. Action on the remainder of the suit was transferred to the Southern District of New York. *Significance*—The court strictly construes the concept of instrumentality under the Foreign Sovereign Immunities Act of 1976. *Gibbons v. Republic of Ireland*, 532 F. Supp. 668 (D.D.C. 1982).

