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Case Digest

Journal Staff

CASE DIGEST

This *Case Digest* provides brief analysis 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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1. ACT OF STATE DOCTRINE

HICKENLOOPER AMENDMENT INAPPLICABLE TO OIL DRILLING CONCESSION GRANTED BY FOREIGN GOVERNMENT

Plaintiff, an importer of petroleum into the United States, sued to recover crude oil seized on tankers in the Persian Gulf and shipped to America. Plaintiff had been granted the exclusive right to extract oil beneath the territorial waters claimed by the Trucial State of Umm al Qaywayn (Umm). Buttes Oil & Gas Company (Buttes) subsequently had been granted an oil and gas concession by the ruler of Sharjah, an adjoining Trucial State. The agreement between Buttes and Sharjah was later expanded to include the territorial waters claimed by Umm and covered by plaintiff's concession. Umm, Sharjah, and Iran reached an interim agreement that postponed final settlement of the territorial waters dispute and awarded an exclusive concession to Buttes, with royalties shared by the three states. Before any oil was extracted from the disputed area, Umm terminated plaintiff's concession, alleging breach of contract. Buttes soon commenced extracting oil, which began arriving in the United States in September 1974. Plaintiff contended that the actions of Umm, Sharjah, and Iran were tantamount to a confiscation and that the Hickenlooper Amendment required adjudication of the controversy. Defendant asserted that the Act of State Doctrine precluded inquiry into the acts of Iran

and Sharjah. The District Court for the Western District of Louisiana granted defendant's motion for summary judgment. The court noted that to render a decision would be to decide a boundary dispute that Iran, Sharjah, and Umm have intentionally postponed. *Significance*—When plaintiff challenges an act of a foreign government that is unrelated to confiscation of title to real property, the Hickenlooper Amendment does not apply and the Act of State Doctrine may be invoked to bar any claim for damages resulting from that action. *Occidental of Umm al Qaywayn v. Cities Services Oil Co.*, 396 F. Supp. 461 (W.D. La. 1975).

2. ADMIRALTY

SHIPOWNER IS ENTITLED TO INDEMNIFICATION FROM TORTFEASOR WHEN A COVENANT OF WORKMANLIKE PERFORMANCE BY THE TORTFEASOR CAN REASONABLY BE IMPLIED

Plaintiff, a seaman employed by States Line, was injured due to the unseaworthiness of the Navy landing craft that was transporting him to shore. Even though the Government's contract did not contain a requirement to provide ship-to-shore transportation for States Line's crew members, States Line subsequently sought indemnity from the Government. The court implied a warranty of workmanlike performance, but cautioned that there could be no implied warranty unless the relationship of the tortfeasor and shipowner made the implication reasonable. The court noted the "symbiotic" relationship of the Navy and States Line concerning the launch service, and the court also observed that the Navy was in the best position to remedy problems with the Navy landing craft. *Significance*—This holding extends the shipowner's right to indemnification to cases in which the obligation of workmanlike performance can reasonably be implied in the absence of an express contract between the indemnitor and the indemnitee for launch service between vessel and shore. *Flunker v. United States*, 528 F.2d 239 (9th Cir. 1975).

JUDICIALLY-CREATED MARITIME WRONGFUL DEATH CAUSE OF ACTION APPLIES RETROACTIVELY AS EXCLUSIVE REMEDY

Defendant's ship collided with a United States Coast Guard vessel in Louisiana territorial waters in 1968. Claims were filed under the Louisiana wrongful death statute for damages resulting from the injuries and deaths of Coast Guard crewmen, and for property damage. Defendant appealed the award of damages for "emotional distress," contending there should be no award for

"mental grief and anguish," and also argued that the comparative negligence rule for allocating property damage should apply. The court determined that the decision in *Moragne v. States Marine Line*, 398 U.S. 375 (1970), which created a new cause of action for wrongful death under general maritime law, should apply retroactively and preclude recognition in admiralty of state wrongful death statutes. The court held that the district court should apportion its award for "emotional distress," eliminating the compensation for mental anguish, which is not compensable under general maritime wrongful death actions. The court also retroactively applied the rule of comparative negligence for allocating property damage liability, as stated in *United States v. Reliable Transfer Company, Inc.*, 421 U.S. 397 (1975), since it would not produce substantial inequitable results in this case. *Significance*—This case eliminates the use of state wrongful death statutes in maritime cases, and extends the comparative negligence rule to pre-1975 actions where it is not shown that the parties relied on the divided damages rule. *Matter of S/S Helena*, 529 F.2d 744 (5th Cir. 1976).

TIME-CHARTERER NOT ENTITLED TO INDEMNIFICATION FOR LITIGATION EXPENSES WHEN NOT OBLIGATED TO PROVIDE SEAWORTHY VESSEL

Time-charterer's employee was injured during the loading of its ship, and the third-party defendant stevedore was required to indemnify the defendant shipowner. The time-charterer was absolved of liability, and then moved for indemnity from the stevedore for its defense costs and attorneys' fees. The time-charterer argued that the stevedore breached its contract by failing to load the ship properly and that litigation expenses were a compensable result of the breach. The time-charterer also claimed breach of an implied warranty of workmanlike performance running in its favor, or as a third-party beneficiary of the implied warranty. The Court of Appeals ruled that a litigant has no right to indemnification for its defense costs and attorneys' fees absent a statute or enforceable contract term providing for such, or a warranty of workmanlike performance running in favor of the time-charterer. *Significance*—This case demonstrates that there is no right to indemnification in favor of the time-charterer when he has not assumed an obligation to provide a seaworthy vessel. *Stranaham v. A/S Atlantica & Tinfos Papirfabrik*, 521 F.2d 700 (9th Cir. 1975).

CLAIMS WITHIN SCOPE OF THE PUBLIC VESSELS ACT CANNOT BE BROUGHT UNDER THE TERMS OF THE SUITS IN ADMIRALTY ACT

The fishing vessel of plaintiff, a Philippine corporation, sank after a collision with a naval destroyer of defendant, the United States. The plaintiff sought recovery for damages and asserted in personam admiralty jurisdiction over the defendant under both the Suits in Admiralty Act and the Public Vessels Act. The district court denied jurisdiction. It found first that the Public Vessels Act applied to the exclusion of the Suits in Admiralty Act, since the destroyer was a United States public vessel. It then ruled specifically that the plaintiff's suit was barred by the reciprocity provision of the Public Vessels Act, since the Philippine Government would not have allowed similar suits by nationals of the United States. The court of appeals reversed. It determined that admiralty jurisdiction could be obtained under either Act, thereby permitting the plaintiff to claim under the Suits in Admiralty Act and circumvent entirely the reciprocity requirement of the Public Vessels Act. The court of appeals justified this decision on the strength of the 1960 amendment to the Suits in Admiralty Act, which omitted the original proviso that United States vessels charged with wrongdoing must be employed as merchant vessels before sovereign immunity of the United States could be waived under the Act. The court took this deletion to signify that the United States could be sued for the torts of both its public and merchant vessels under the Suits in Admiralty Act, without reference to the Public Vessels Act. The Supreme Court reversed the court of appeals and sided with the district court, holding that plaintiff's suit could only be maintained under the Public Vessels Act and was therefore barred by lack of reciprocity. The Court reasoned that to decide otherwise would allow evasion of the Public Vessels Act at will by plaintiffs and would therefore constitute an effective repeal of the Act without an express repeal by Congress. This would contravene the cardinal principle of statutory construction that repeals by implication are not favored. The Court reviewed the legislative history of the 1960 amendment to the Suits in Admiralty Act and concluded that Congress' purpose had not been to render nugatory the provisions of the Public Vessels Act. Instead, the Court determined that Congress meant to end the confusion and harsh results possible for plaintiffs attempting to choose the proper forum for a claim exceeding $10,000 against the United States by virtually eliminating the quasi-admiralty jurisdiction of the Court of Claims under the Tucker Act. *Significance*—This holding reasserts in a commonsense manner the jurisdiction of the Public Vessels Act and its

sound public policy justifications in the face of a novel attack. *United States v. United Continental Tuna Corp.*, 96 S.Ct. 1319 (1976).

LUMBER EMPLOYEE WORKING ON SALTWATER POND HELD NOT ENGAGED IN MARITIME EMPLOYMENT AND NOT COVERED BY LHWCA

Claimant-employee was injured while working as a "pondman" for Weyerhauser Company. His duties consisted of sorting logs on a saltwater pond and feeding them into a mill for processing. The Benefits Review Board for the Director, Office of Workers' Compensation Programs of the United States Department of Labor, granted compensation to claimant under the Longshoremen's and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. § 901 *et seq.*. The issue on appeal was whether the claimant, who was not working as a longshoreman or harborworker, was entitled to compensation under the LHWCA. The court reversed the Benefits Review Board, holding that the claimant was not engaged in maritime employment and not entitled to LHWCA coverage. The court noted that the 1972 amendments to the LHWCA that expanded the definition of "navigable waters" to include "adjoining" piers and other areas did not extend coverage and uniform compensation to *anyone* injured in an adjoining area. Instead, the court held that the LHWCA amendments only extended coverage to maritime employees injured in adjoining areas. *Significance*—This holding demonstrates the protective scope of LHWCA in case of injury on adjoining piers and other areas. *Weyerhauser Company v. Gilmore*, 528 F.2d 957 (9th Cir. 1976).

3. ALIEN'S RIGHTS

UNEQUAL TREATMENT OF UNWED FATHERS FOR IMMIGRATION PURPOSES HELD CONSTITUTIONAL

Plaintiffs, three unwed natural fathers and their illegitimate offspring, contended that the definition of parent and child in the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, is unconstitutional on its face since unwed natural fathers are excluded from favorable treatment while unwed natural mothers are not. In each case either the father or child is a United States citizen and the other is an alien excluded from the United States. The court held that the potential for sham claims, administrative inconvenience, and problems of investigation are sufficient to create a rational basis for the statutory distinction and entered judgment for defendant. The court observed that such suspect grounds for

discrimination as race, physical condition, political beliefs, sex, age, and national origin may be acceptable when applied to aliens. *Significance*—This affirms the constitutionality of the distinction between unwed natural fathers and mothers for immigration purposes in the Eastern District of New York. *Fiallo v. Levi*, 406 F. Supp. 162 (E.D.N.Y. 1975).

4. ANTITRUST

ACT OF STATE DOCTRINE DOES NOT FORECLOSE ANTITRUST CLAIM WHERE CLAIM CAN BE RESOLVED WITHOUT EXAMINATION OF FOREIGN GOVERNMENT'S ACTS

Plaintiff, an independent Libyan oil producer, brought suit against other Libyan oil producers for violations of the Sherman Act, 15 U.S.C. § 1, and the Wilson Tariff Act, 15 U.S.C. § 8. Defendants contended that plaintiff's first claim of unlawfully imposed customer and market restrictions, second claim of an unlawful group boycott, and third claim of conspiracy to have plaintiff's Libyan oil concession nationalized were foreclosed by the Act of State Doctrine, which precludes judicial inquiry into the public acts of a foreign government within that government's own territory. Ruling on defendants' pre-trial motions, the court held that the acts of the Libyan government need not be examined to resolve the issues presented by the first two claims. The court granted defendants' motion to dismiss the third claim and refused to consider merely the conduct which led to the acts of the Libyan government without examining the acts themselves. *Significance*—This case demonstrates that the Act of State Doctrine does not foreclose an antitrust claim where the claim can be resolved without examination of the acts of the foreign government. *Hunt v. Mobil Oil Corporation*, 410 F. Supp. 10 (S.D.N.Y. 1976).

CUSTOMERS OF INTERMEDIATE NON-TARGET SUPPLIERS LACK STANDING TO BRING ANTITRUST ACTIONS AGAINST MAJOR OIL COMPANIES STAGING BOYCOTT OF O.P.E.C. MEMBER

Defendant major oil companies staged a group boycott of Libyan crude oil in response to the announced nationalization of 51 per cent of defendants' Libyan interests. As a result, plaintiffs' intermediate suppliers were unable to deliver needed oil at agreed prices. Plaintiffs then brought antitrust actions which were consolidated at trial. The Second Circuit Court of Appeals affirmed the dismissal of the plaintiffs' actions, agreeing with the trial court

that no matter how immediate and foreseeable their injuries might be, customers injured as a result of their relationship to an intermediate "non-target" of the boycott do not have standing to bring antitrust actions against the boycott-staging companies. The court remanded one count, however, in which plaintiffs alleged that defendants conspired to reduce the supply of fuel available and to inflate unreasonably the price charged for it to east coast electric utilities. *Significance*—The court observed this conspiracy would, if proven, make plaintiffs' supplier a member of the conspiracy instead of a victim and would give plaintiffs standing to bring the antitrust action. *Long Island Lighting Co. v. Standard Oil Co. of Calif.*, 521 F.2d 1269 (2d Cir. 1975).

ROBINSON-PATMAN ACT DISCRIMINATORY PRICING PROHIBITIONS APPLY ONLY TO WHOLLY DOMESTIC TRANSACTIONS

Plaintiffs brought treble damage suits against defendants, alleging violations of antidumping provisions of the antitrust laws. Defendants filed motions to dismiss those counts of plaintiffs' complaints based on section 2(a) of the Robinson-Patman Act, 15 U.S.C. § 13(a), which prohibits price discrimination between different purchasers of commodities of like grade where any of the purchasers are involved in commerce and where the commodities are sold for use, consumption, or resale in the United States. Plaintiffs alleged that defendants sold televisions and other electronic products to United States purchasers at lower prices than those charged to Japanese purchasers, and that the Robinson-Patman section applies whenever either branch of purchasers are in United States commerce. Defendants argued that the Act does not apply because the sales to Japanese purchasers are not for use, consumption, or resale within the United States. The court granted the motions to dismiss the section 2(a) counts and held the section inapplicable because the sales must be wholly within United States commerce. The court interpreted the requirement of use, consumption, or resale as a general requirement that the purchase be in United States commerce to come under section 2(a) of the Act. *Significance*—This case of first impression limits the discriminatory pricing use of the Robinson-Patman Act to wholly domestic transactions. *Zenith Radio Corp. v. Matsushita Electric Industrial Co., Ltd.*, 402 F. Supp. 244 (E.D. Pa. 1975).

5. BANKRUPTCY

NO DISTINCTION EXISTS BETWEEN FOREIGN AND DOMESTIC BANKS FOR PURPOSES OF BANKRUPTCY

Defendant Israel-British Bank (IBB) was a banking corporation that owned property in the United States, although it was not chartered and operating in the United States. IBB was adjudicated bankrupt after filing a voluntary bankruptcy petition in the United States. Plaintiffs, the Federal Deposit Insurance Corporation and the Bank of the Commonwealth, had perfected creditor liens against IBB. The liens could have been voided by the trustee in bankruptcy on the basis of the express exclusion of "banking corporations" from the statute. IBB argued that the foreign banks could be adjudicated bankrupt since Congress had considered only domestic and territorial banks when excepting "banking corporations." The court held the "banking corporations" exclusion did comprehend foreign banks. *Significance*—This case, a case of first impression, precludes use of the voluntary provisions of the Bankruptcy Act by the international banking community. *In re Israel-British Bank (London) Limited*, 401 F. Supp. 1159 (S.D.N.Y. 1975).

6. CUSTOMS AND TRADE REGULATIONS

TRADE ACT OF 1974 EMPOWERS PRESIDENT TO IMPOSE LICENSE FEES ON IMPORTS THREATENING NATIONAL SECURITY

President Ford ordered the increase of license fees for oil imported to the United States, as authorized by the Trade Act of 1974 § 232(b), 19 U.S.C. § 1862(b) (Supp. IV), in response to finding that national security was jeopardized by excessive importation of petroleum products. Respondents, several utility companies and eight states, sought to enjoin the order and contended that imposition of the fees exceeded the President's constitutional and statutory authority. Appeals determined that the statutory language empowering the President to "adjust the imports" authorized quantitative restrictions but prohibited monetary controls. The Supreme Court held that section 232(b) permits the President to impose fees on imports and that the regulatory power was not an unconstitutional delegation of power. The Court stated that section 232(b) and its legislative history were ambiguous as to the nature of the President's discretionary powers once an effect on national security is discovered. Consequently, the Court chose to interpret broadly the power to "adjust" imports so as to include monetary controls. Since the statute stipulated factors to be con-

sidered before presidental authority is invoked, the Court declared that Congress has devised an intelligible principle to direct the grant of discretionary power to the President, thereby obviating an improper delegation of legislative power. *Significance*—Once the importation of an article is found to impair national security under section 232(b), the President is not restricted in choosing quantitative or monetary controls to curb the imports. *Federal Energy Administration v. Algonquin SNG, Inc.*, 96 S.Ct. 2295 (1976).

BREACH OF REPRESENTATIONS IN SUPPLIER'S CERTIFICATE EXECUTED BY EXPORTER OF MEDICINAL DRUGS GIVES UNITED STATES INDEPENDENT CAUSE OF ACTION FOR COMPENSATORY DAMAGES

The Agency for International Development (AID) brought suit against exporters of medicinal drugs for breach of a sales contract with Vietnamese importers. Defendants had executed an AID Supplier's Certificate as part of the arrangement by which AID financed the transaction, obligating them to comply with AID regulations requiring adherence to the terms of letters of credit issued by financing banks. The letters of credit, in turn, required compliance with certain provisions of the Federal Food, Drug and Cosmetic Act concerned with the safety and efficacy of the exported drugs. The government's complaint alleged breach of representations contained in those documents, and that shipment of the drugs was illegal under the Act, thereby entitling the government to recover the full sum paid for those shipments. On motion for summary judgment, defendants argued that AID was merely the promisee in a three-party arrangement in which the Vietnamese importers were donee third-party beneficiaries who lacked standing to sue for compensatory damages. Relying on a similar holding in *United States v. Waterman Steamship Corp.*, 471 F.2d 186 (5th Cir. 1973), the court ruled that the government lacked standing because breach of an AID Supplier's Certificate creates an independent cause of action for compensatory damages. *Significance*—This case confirms the utility of the Supplier's Certificate as a device for affording AID a greater degree of control over the administration of its programs and policies. *United States v. Emons Industries, Inc.*, 406 F. Supp. 355 (S.D.N.Y. 1976).

FOREIGN REPORTING REQUIREMENTS OF THE BANK SECRECY ACT ARE CONSTITUTIONAL

Defendant citizen was discovered to be transporting a large sum of cash into the United States by United States Customs Inspectors during a routine border search. Defendant refused to comply

with the foreign reporting requirements of the Bank Secrecy Act, which called for disclosure of the name and business of the person for whom the money was being transported, as well as the address and destination of the person transporting the money. Defendant was charged with willful violation, and moved to dismiss the information against her on grounds that the reporting requirements violate her first amendment right to freedom of association. The court held that defendant's first amendment rights were not violated since disclosure of at most an agency relationship and the identities of those others involved would not expose defendant to criminal liability. The court also supported its denial of the first amendment claim by noting that disclosure of the information by defendant would certainly not involve defendant's beliefs or affiliations. *Significance*—In a case of first impression, the court upheld the constitutionality of the foreign reporting requirements of the Bank Secrecy Act. *United States v. San Juan*, 405 F. Supp. 686 (D. Vt. 1975).

SEARCH WITHOUT PROBABLE CAUSE OF VESSEL DOCKED IN UNITED STATES HARBOR MAY BE JUSTIFIED AS CUSTOMS SEARCH IF AGENTS ARE REASONABLY CERTAIN THAT VESSEL CAME FROM INTERNATIONAL WATERS

Defendants' boat was observed by customs agents as it was being docked in San Diego Bay. The agents searched the boat and found 880 pounds of marijuana. Defendants contended the search was without probable cause and could not be justified as a customs search since the boat was well within United States territorial waters when observed by customs agents. The government argued that effective enforcement of the customs laws necessitates searching all vessels whether or not there is reason to believe they have been in international waters. The court determined that search of a vessel in harbor without probable cause pursuant to 19 U.S.C. § 1581(a) may be valid under the fourth amendment as a border search as a "functional equivalent" of the border where there is evidence the boat actually came from international or foreign waters, or where there are articulable facts supporting a reasonably certain conclusion by customs officers that the vessel crossed the border into United States territory. The case was remanded to determine whether defendants actually crossed the border, and if the customs agents were reasonably certain of the border crossing. *Significance*—This case establishes that customs agents must be reasonably certain a border crossing has occurred before they can justifiably make a customs search of a vessel already within United

States waters, even though proof of an actual crossing may not be obtainable. *United States v. Tilton*, 534 F.2d 1363 (9th Cir. 1976).

7. EUROPEAN ECONOMIC COMMUNITY

NATIONAL OF EUROPEAN COMMUNITY MEMBER STATE GUARANTEED PROTECTIONS OF RIGHT TO TRAVEL THROUGHOUT THE COMMUNITY

Questions concerning the prosecution of Royer, a French national, to prevent his illegal entry and residence in Belgium prompted a preliminary ruling by the Court of Justice of the European Communities. Royer, a man with a criminal record, was discovered to have resided in Belgium since 1971 without complying with Belgian administrative formalities for entrance. Royer was ordered to leave Belgium; but he returned, and was arrested. The ministerial decree expelling Royer stated his conduct showed his mere presence to be a "danger to public policy." The Court of Justice ruled that right of entry to another Member State is directly conferred on any person subject to Community law, regardless of the administrative requirements of the host state. The Court further ruled that the host state is obligated to issue a residence permit to any person subject to Community law, and that mere noncompliance with entrance formalities is not conduct that threatens the host state's public policy and security. *Significance*—This case illustrates the limitations imposed by Community law upon the right of any Community Member State to exclude or expel a national of another Community Member State. *Royer*, Proceedings of the Court of Justice of the European Communities, Case 48/75 (April 8, 1976).

8. INTERNATIONAL AIR TRANSPORT

AIR CARRIER NOT LIABLE UNDER WARSAW CONVENTION FOR PASSENGER INJURIES AFTER DISEMBARKING

Plaintiffs sought damages from defendant air carrier for personal injuries and deaths resulting from a terrorist attack in the baggage area of Lod Airport, Tel Aviv. The baggage area was not under the defendant's control. Plaintiffs claimed defendant carrier was liable without fault, based on the Warsaw Convention, as modified by the Montreal Agreement. The Convention provides for carrier liability in case of passenger injury during embarking or disembarking. Plaintiffs would extend the applicability of the Warsaw Convention to include accidents occurring after passengers had reached the apparent safety of the terminal. The court refused to extend the existing case law and granted defendant's motion for

summary judgment, noting the victims had concluded air travel and disembarked at the time of the attack. *Significance*—This case illustrates the scope of carrier liability under the Warsaw Convention for passenger injuries not sustained during flight, boarding, or disembarking. *In re Tel Aviv*, 405 F. Supp. 154 (D. Puerto Rico 1975).

9. JURISDICTION AND PROCEDURE

FOREIGN TRIBUNALS NEED NOT BE CONVENTIONAL COURT PROCEEDINGS TO QUALIFY FOR UNITED STATES JUDICIAL ASSISTANCE

Tokyo District Court requested immediate assistance in taking depositions of California residents, as allowed for by the "Procedures for Mutual Assistance in Administration of Justice in Connection with the Lockheed Aircraft Corp. Matter." The depositions were required by the Tokyo public prosecutor for use in criminal investigations and possible future criminal trials. The California residents obtained a stay of proceedings pending appeal and argued that the role of the Tokyo District Court was not that of a foreign "tribunal" contemplated by 28 U.S.C. § 1782. The court determined that the 1964 amendment to section 1782 broadened prior law and permitted extension of international assistance to bodies of a quasi-judicial or administrative nature at the court's discretion. Since both the public prosecutor and district court of Tokyo were empowered to make decisions of a judicial or quasi-judicial nature, the court ruled that section 1782 was satisfied and vacated the stay. *Significance*—A court may, in its discretion, grant United States judicial assistance to foreign administrative tribunals and quasi-judicial agencies, as well as conventional court proceedings in foreign countries. *In re Letters Rogatory From the Tokyo District, Tokyo*, ____ F.2d ____ (9th Cir. 1976).

QUASI-IN REM ATTACHMENT OF FOREIGN CORPORATION BY NON-RESIDENT DEFENDANT IS NOT VIOLATIVE OF DUE PROCESS

Plaintiff purchaser of fish, a New York corporation, sued the non-resident seller when the fish arrived in damaged condition. Defendant seller filed a third-party complaint against the shipowner, a foreign corporation, asserting quasi-in rem jurisdiction by attaching its New York Protection & Indemnity insurance policy. The third-party defendant challenged jurisdiction by alleging that the attachment in New York by a non-resident of New York was violative of due process. The court denied the third-party defendant's jurisdictional challenge, even though it recognized that

New York residency of the attaching party is a "crucial consideration" in the absence of special circumstances. The court noted the defendant had been unwillingly brought into the jurisdiction, and that the defendant claimed justice would not be possible without the attachment. The court found sufficient forum interest in the welfare of persons in its jurisdiction, especially those involuntarily brought before its courts, to provide jurisdiction for the third-party attachment. *Significance*—This decision clarifies and expands the permissible use of quasi-in rem attachments by non-resident defendants. *Seafood Imports, Inc. v. A.J. Cunningham Packing Corp.*, 405 F. Supp. 5 (S.D.N.Y. 1975).