Printed in U.S.A.
Vol. 116, No. 6

Note

FOREIGN ANTISUIT INJUNCTIONS AND THE SETTLEMENT EFFECT

Connor Cohen

ABSTRACT—International parallel proceedings, which are concurrent identical or similar lawsuits in multiple countries, often ask courts to balance efficiency and fairness against the speculative fear of insulting foreign nations. Some litigants abuse foreign duplicative litigation to exhaust their opponents' resources and pressure them into settling out of court. This Note provides the first empirical evidence of such abuse of international parallel proceedings: when courts deny motions to enjoin foreign parallel litigation, the settlement rate rises significantly. Considering the results of this empirical project and its limitations, I encourage future studies on international parallel proceedings and settlement. I also argue for the resolution of a longstanding circuit split on the legal standard applicable to foreign antisuit injunctions in favor of the permissive approach. Rather than presuming that insult and retaliation follow every injunction, the permissive approach is responsive to evidence of unfair settlement pressure, and it promotes efficiency with due regard for actual foreign-relations concerns.

AUTHOR—J.D. Candidate, Northwestern Pritzker School of Law, 2022; B.F.A., University of North Carolina School of the Arts, 2018. I am grateful to Professor Zachary Clopton for inspiring this work and guiding me from inception to publication. Thanks also to Professor Christopher Whytock and Professor William Hubbard for their generous feedback. This Note benefitted from the comments of Professor Tom Ginsburg, Professor Diego Zambrano, and participants of the 2022 Salzburg Cutler Fellows Program. Thanks to my wonderful peers on the *Northwestern University Law Review*, including Cliff Goldkind, Sarah Chanski, Oren Kriegel, Xiaorui Yang, Sarika Pandrangi, Charles Tso, Deepa Chari, Anthony Caneris, Michael Chen, Javier Andujar, Matt Caister, Michael Palmer, Anton Khilkov, and Bradford McGann. Finally, I thank my wife, Jamie Hwang, my parents, Maryjo Hartenberger and Gary Cohen, and my sister, Georgia Cohen, for their love and support.

INTRODUCTION 1578
I. PROBLEMS WITH INTERNATIONAL PARALLEL PROCEEDINGS 1583
A. Wasteful Races to Judgment 1583
B. Gamesmanship and Settlement Pressure 1585
C. Balancing Comity 1587
II. FOREIGN ANTISUIT INJUNCTIONS: A SPLIT OVER INTERNATIONAL COMITY 1592
III. TESTING THE SETTLEMENT EFFECT 1595
A. Sample 1598
B. Unavailable Opinions and Selection Bias 1599
C. Defining and Coding Settlement 1603
D. Coding Independent Variables 1605
IV. RESULTS 1607
A. Foreign Antisuit Injunction Motion Decisions and Settlement 1607
B. Case Type 1610
C. Amount in Controversy 1612
D. Repetitive and Reactive Litigation 1613
E. Published and Unpublished Opinions 1614
F. Dispositive Motions 1616
G. Future Studies 1618
V. RESOLVING THE CIRCUIT SPLIT 1623
CONCLUSION 1627
APPENDIX: CASES WITH FOREIGN ANTISUIT INJUNCTION DECISION BY FEDERAL DISTRICT COURTS, 2000–2020 1629

INTRODUCTION

In 2006, shareholders of a Ukrainian metals plant challenged a looting scheme that sucked hundreds of millions of dollars out of the plant and into American and foreign corporations.[1] The shareholders sued a group of Ukrainian and Russian billionaires, American businessmen, and foreign and domestic companies in the Massachusetts federal district court, alleging violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act.[2] Specifically, the shareholders charged that the billionaire-defendants

[1] Athina Invs. Ltd. v. Pinchuk, 443 F. Supp. 2d 177, 178–79 (D. Mass. 2006); Complaint at 1–3, *Athina*, 443 F. Supp. 2d 177 (D. Mass. 2006) (No. 06-cv-10560); *see* George Bochetto, *Taking Exception to 'Justice, Russian Style,'* FORBES (Mar. 19, 2008), https://www.forbes.com/2008/03/19/russia-legal-lawyers-cx_0319marksletter.html?sh=674e588fb4cd [https://perma.cc/E38G-WXTV].

[2] Complaint, *supra* note 1, at 1–3. Among the named individual defendants were Ukrainian billionaire Victor Pinchuk, Russian billionaires Alexander Abramov and Viktor Vekselberg, and businessmen Jerry Margulis and Alexander Novack, both U.S. citizens. *Id.* at 34–35.

took control of the metals plant, entered self-dealing contracts, diverted profits through U.S. banks into companies under the defendants' control, and paid bribes and kickbacks to Ukrainian government officials.[3]

The day after the shareholders filed their RICO complaint, an article detailing the allegations against billionaire-defendant Viktor Vekselberg appeared in a Russian newspaper.[4] Vekselberg responded by directing a Swiss company he owned to file a defamation lawsuit against Igor Kolomoisky, the beneficial owner of shareholder Athina Investments, in a Moscow arbitration court.[5]

Six months later, the shareholders asked the Massachusetts district court to issue a foreign antisuit injunction preventing Vekselberg from continuing the parallel Moscow suit.[6] The shareholders argued that Vekselberg's parallel suit aimed "to subvert the[] Massachusetts action by placing extreme financial pressure on Mr. Kolomoisky."[7] While the named parties in the Moscow suit were different in name from those in the Massachusetts suit, the district court observed that the "real parties driving the parallel suits" were similar enough.[8] Likewise, both suits sought to resolve whether Vekselberg and his coconspirators bribed the Ukrainian government.[9] So the Massachusetts court considered the Moscow suit a parallel proceeding.[10]

The court further acknowledged that the Moscow action looked like "a baseless exercise in legal gamesmanship" seeking "to thwart plaintiffs' willingness and financial ability to continue on with the Massachusetts action."[11] Nonetheless, the court denied the foreign antisuit injunction motion out of respect for the Russian arbitration court.[12] Within a few months, the parties settled.[13] The outcome in *Athina Investments Ltd. v. Pinchuk* is not surprising: most U.S. federal courts avoid interfering with international parallel proceedings, even to avoid unfairness and the inefficiency of duplicative lawsuits.

---

[3] *Id.* at 10–15.

[4] *Athina*, 443 F. Supp. 2d at 178.

[5] *Id.*

[6] *Id.*; *see infra* Part I (discussing international parallel proceedings).

[7] *Athina*, 443 F. Supp. 2d at 178.

[8] *Id.* at 181.

[9] *Id.* at 180.

[10] *Id.* at 181.

[11] *Id.* at 179.

[12] *Id.* at 181–82.

[13] *See id.* at 178–79 (acknowledging that the Moscow suit threatened plaintiffs' financial capacity to continue litigating in Massachusetts); Notice of Dismissal at 1, *Athina*, 443 F. Supp. 2d 177 (D. Mass. 2006) (No. 06-cv-10560); Bochetto, *supra* note 1 (reporting that the parties in *Athina* settled).

International parallel proceedings are identical, related, or similar lawsuits in multiple countries.[14] A party seeking to consolidate parallel proceedings into a single case may request relief in a U.S. court through one of a few judge-created common law remedies. First, the court can issue an antisuit injunction, preventing the opposing party from litigating in the foreign forum.[15] Second, the lis alibi pendens doctrine allows the court to temporarily stay the domestic case pending resolution of the foreign case—the mirror image of an antisuit injunction.[16] Third, under the doctrine of forum non conveniens, the court may dismiss the domestic case, allowing the foreign case to continue.[17] This Note focuses on the first option, exploring the standards U.S. federal courts apply when ruling on antisuit injunction motions, before attempting to test the relationship between antisuit injunction decisions and the probability of settlement.[18]

Foreign antisuit injunctions allow U.S. courts to halt parties from participating in parallel litigation in a foreign forum.[19] Federal circuit courts have split over the appropriate legal standard for foreign antisuit injunctions—specifically, over the degree of deference domestic courts owe

---

[14] *See* GARY B. BORN & PETER B. RUTLEDGE, INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS 531 (6th ed. 2018); Samantha Koeninger & Richard Bales, *When a U.S. Domestic Court Can Enjoin a Foreign Court Proceeding*, 22 CARDOZO J. INT'L & COMPAR. L. 473, 475 (2014). Because this Note focuses on civil litigation in U.S. federal courts, the term "international parallel proceedings" will most often refer to parallel cases in one U.S. court and one foreign court. *See infra* Part I.

[15] BORN & RUTLEDGE, *supra* note 14, at 532.

[16] *Id.*; *see* Finova Capital Corp. v. Ryan Helicopters U.S.A., Inc., 180 F.3d 896, 900–01 (7th Cir. 1999); Turner Ent. Co. v. Degeto Film GmbH, 25 F.3d 1512, 1523 (11th Cir. 1994); Evergreen Marine Corp. v. Welgrow Int'l Inc., 954 F. Supp. 101, 105 (S.D.N.Y. 1997); *see also* Maggie Gardner, *Deferring to Foreign Courts*, 169 U. PA. L. REV. 2291, 2335–36 (2021) (explaining how the U.S. and European approaches to lis alibi pendens differ). Professor Gardner suggests pragmatic reforms to U.S. lis alibi pendens: rejecting consideration of foreign relations, she encourages courts to start with a presumption of retaining jurisdiction, then focus on the progression of the foreign litigation and the connection of the dispute to each of the competing forums. Gardner, *supra*, at 2339, 2343–45, 2349. For an argument favoring reliance on international comity in lis alibi pendens decisions, see N. Jansen Calamita, *Rethinking Comity: Towards a Coherent Treatment of International Parallel Proceedings*, 27 U. PA. J. INT'L ECON. L. 601, 641–78 (2006).

[17] BORN & RUTLEDGE, *supra* note 14, at 532; *see* Contact Lumber Co. v. P.T. Moges Shipping Co., 918 F.2d 1446, 1454 (9th Cir. 1990); Brinco Mining Ltd. v. Fed. Ins. Co., 552 F. Supp. 1233, 1242 (D.D.C. 1982); *see also* Maggie Gardner, *Retiring Forum Non Conveniens*, 92 N.Y.U. L. Rev. 390, 391–400, 423–27 (2017) (urging the abolishment of forum non conveniens because it gives judges unguided discretion and sometimes undermines U.S. foreign relations).

[18] This Note, and the empirical study within, define settlement to mean the resolution of disputes through private agreement or mediation, stipulated voluntary dismissal, default judgment, or dismissal for lack of prosecution—not judgment on the merits, nor for jurisdictional or procedural reasons. *See* Theodore Eisenberg & Charlotte Lanvers, *What Is the Settlement Rate and Why Should We Care?*, 6 J. EMPIRICAL LEGAL STUD. 111, 116–17 (2009); *infra* Section III.C.

[19] *Infra* Part II.

to the apparent interests of a foreign nation. This deference is called "international comity."[20]

Courts and scholars discussing foreign antisuit injunctions have focused on the tension between international comity on one hand and the policy interests of the court and litigants on the other, especially efficiency and fairness.[21] The dominant restrictive approach,[22] valuing international comity above efficiency, creates a strong presumption in favor of allowing international parallel proceedings to continue at least until one of the courts reaches a final judgment.[23] By contrast, the permissive approach emphasizes efficiency over comity: permissive courts more readily enjoin efforts to litigate duplicative cases abroad.[24] *Athina* exemplifies the practical significance of the circuit split. The Massachusetts district court, sitting in a restrictive circuit, leaned heavily on international comity in denying the plaintiffs' foreign antisuit injunction motion.[25]

Because international comity is a vague and flexible notion,[26] it is difficult to balance against unrelated policy concerns affecting individual litigants such as efficiency, fairness, convenience to litigants, and avoiding

---

[20] Goss Int'l Corp. v. Man Roland Druckmaschinen Aktiengesellschaft, 491 F.3d 355, 359–61 (8th Cir. 2007) (explaining the split); *infra* Section I.C.

[21] *Compare Goss Int'l*, 491 F.3d at 359–61 (placing international comity above other policy concerns), *with* Laker Airways Ltd. v. Sabena, Belgian World Airlines, 731 F.2d 909, 926–27 (D.C. Cir. 1984) (reasoning that foreign "parallel proceedings on the same in personam claim should ordinarily be allowed to proceed simultaneously"), China Trade & Dev. Corp. v. M.V. Choong Yong, 837 F.2d 33, 36–37 (2d Cir. 1987) (citing *Laker Airways*, 731 F.2d at 917–21) (same), *and* Daniel Tan, *Anti-Suit Injunctions and the Vexing Problem of Comity*, 45 VA. J. INT'L L. 283, 303–13 (2005) (arguing that international comity should play a limited role in foreign antisuit injunction decisions).

[22] While courts use the terms "conservative" and "liberal," referring to their literal meanings rather than political ideologies, this Note will use "restrictive" and "permissive" instead, which are more accurate labels for the legal standards.

[23] *See Laker Airways*, 731 F.2d at 926–27; Walter W. Heiser, *Using Anti-Suit Injunctions to Prevent Interdictory Actions and to Enforce Choice of Court Agreements*, 2011 UTAH L. REV. 855, 857–58 (2011).

[24] BORN & RUTLEDGE, *supra* note 14, at 553 (citing, as examples of the permissive approach in action, Microsoft Corp. v. Motorola Inc., 696 F.3d 872, 887–89 (9th Cir. 2012); Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, 335 F.3d 357, 366 (5th Cir. 2003); Kaepa, Inc. v. Achilles Corp., 76 F.3d 624, 627 (5th Cir. 1996); and Seattle Totems Hockey Club, Inc. v. Nat'l Hockey League, 652 F.2d 852, 856 (9th Cir. 1981)); Heiser, *supra* note 23, at 858 (stating that the permissive approach "places only modest emphasis on international comity and approves the issuance of an anti-suit injunction when necessary to prevent duplicative and vexatious foreign litigation, and to avoid inconsistent judgments").

[25] Athina Invs. Ltd. v. Pinchuk, 443 F. Supp. 2d 177, 181–82 (D. Mass. 2006) (finding that "the Moscow action does not imperil public policies to an extent that would justify an injunction," in part because of "the forum's substantial interest in international comity").

[26] *Infra* Section I.C.

inconsistent judgments.[27] One concern is how courts' antisuit injunction decisions affect whether any of the parallel proceedings settle. A related issue is whether parallel proceedings end in ways that reflect the merits of underlying disputes. As the court in *Athina* acknowledged, some deep-pocketed litigants may bring foreign parallel proceedings to pressure opponents with fewer resources into settlement.[28] While courts and scholars have condemned such devious litigation strategies,[29] no previous scholarship has attempted to measure the connection between international parallel proceedings and settlement rates—a connection I call the settlement effect. This Note takes up the task, using foreign antisuit injunction motions as a lens to test the settlement effect. In a new empirical study of 128 cases, I find that settlement rates increase significantly after U.S. courts refuse to enjoin foreign duplicative litigation,[30] compared with cases where courts issue antisuit injunctions.

Part I of this Note lays out the common threats that international parallel proceedings pose to courts and litigants. Part II focuses on the longstanding division among federal circuit courts over when to grant foreign antisuit injunctions. Then, Part III describes my empirical study of the settlement effect. The results in Part IV show a statistically significant rise in settlement after foreign antisuit injunction denials—results which should encourage larger studies on parallel proceedings. Part V returns to *Athina*, among other cases, arguing that the permissive approach to foreign antisuit injunctions strikes an appropriate balance between efficiency and international comity while reducing potential abuse of judicial resources. This Note concludes

---

[27] *See* Tan, *supra* note 21, at 310 ("[C]ourts seem to condition the amount of respect due to a foreign court on matters such as the egregiousness of the respondent's conduct and other considerations unrelated to the impact an anti-suit injunction has on comity."); Allendale Mut. Ins. Co. v. Bull Data Sys., Inc., 10 F.3d 425, 432–33 (7th Cir. 1993) ("The only concern with international comity is a purely theoretical one that ought not trump a concrete and persuasive demonstration of harm to the applicant for the injunction, if it is denied, not offset by any harm to the opponent if it is granted."); Turner Ent. Co. v. Degeto Film GmbH, 25 F.3d 1512, 1523 (11th Cir. 1994).

[28] *See Athina*, 443 F. Supp. 2d at 178–79.

[29] *See* Continental Ins. Co. v. Cumberland Trucking Co., 670 F. Supp. 827, 829 (N.D. Ill. 1987) ("There is no reason why Continental, thoroughly enmeshed in settlement negotiations, should precipitously file suit on issues before another tribunal. In the absence of any justification for such action, this court can only conclude that Continental acted in bad faith."); Laker Airways Ltd. v. Sabena, Belgian World Airlines, 731 F.2d 909, 915 (D.C. Cir. 1984) (discussing the defendants' apparent motive "to attack the pending United States action in a foreign court"); Yoshimasa Furuta, *International Parallel Litigation: Disposition of Duplicative Civil Proceedings in the United States and Japan*, 5 PAC. RIM L. & POL'Y J. 1, 5–6 (1995); Michael T. Gibson, *Private Concurrent Litigation in Light of* Younger, Pennzoil, *and* Colorado River, 14 OKLA. CITY U. L. REV. 185, 196–98 (1989); *cf.* Martin H. Redish, *Intersystemic Redundancy and Federal Court Power: Proposing a Zero Tolerance Solution to the Duplicative Litigation Problem*, 75 NOTRE DAME L. REV. 1347, 1353 (2000) (arguing that strategic filing of domestic duplicative suits "causes significant harm, both to the system and individual litigants").

[30] I use "foreign duplicative litigation" interchangeably with "international parallel proceedings."

that the permissive approach is more capable of discouraging exploitative foreign duplicative litigation and deterring unfair settlements.

I. PROBLEMS WITH INTERNATIONAL PARALLEL PROCEEDINGS

International parallel proceedings occur when adjudicative bodies in multiple countries exercise jurisdiction over identical, related, or similar lawsuits.[31] When forums in multiple countries are available—offering different choice of law or procedural rules, and accordingly, different prospects of victory—battles ensue over which forum should resolve a dispute.[32] The result of a high-stakes "battle of the fora" can be a drastic shift in the parties' strategic positions and the probability of settlement.[33]

Without judicial intervention, international parallel proceedings may continue simultaneously until judgment. This is undesirable for several reasons. Section I.A explains how "races to judgment"—a hallmark of parallel proceedings—are wasteful. Section I.B describes unfair uses of parallel proceedings, including harassment, circumvention of forum selection agreements, and settlement pressure. Section I.C then compares the role of comity in domestic and international parallel proceedings and suggests that the differences caution against overreliance on international comity.

A. Wasteful Races to Judgment

Waste is an inevitable side effect of parallel proceedings, and inconsistent judgments are a considerable risk. No constitutional or federal statutory law guides U.S. courts presiding over cases with parallel foreign counterparts.[34] By default, international parallel proceedings advance concurrently, and one court often reaches a final judgment before the other.[35] This phenomenon is known as a "race to judgment."[36] In these situations, the

---

[31] *See* BORN & RUTLEDGE, *supra* note 14, at 531; Koeninger & Bales, *supra* note 14, at 475.

[32] Calamita, *supra* note 16, at 608.

[33] *Id.* at 608–09.

[34] BORN & RUTLEDGE, *supra* note 14, at 532.

[35] Koeninger & Bales, *supra* note 14, at 475; *see also* Heiser, *supra* note 23, at 855 ("The traditional response by U.S. courts to parallel litigation is to do nothing . . . ."); Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976) (noting the "virtually unflagging obligation of the federal courts to exercise the jurisdiction given them" over domestic federal-state parallel proceedings, distinguishing domestic parallel proceedings in two or more federal courts, where avoiding duplicative litigation is the general rule).

[36] Koeninger & Bales, *supra* note 14, at 475. The phrase "race to judgment" implies a pressure on the parties or the courts to expedite proceedings. *See* Kathryn E. Vertigan, *Foreign Antisuit Injunctions: Taking a Lesson from the Act of State Doctrine*, 76 GEO. WASH. L. REV. 155, 158 (2007). Courts

enforceability of the faster court's judgment is uncertain.[37] By contrast, in domestic parallel proceedings—in two state courts or in a state court and a federal court—the slower court typically has an obligation to recognize the judgment of the faster court.[38] Specifically, the doctrines of res judicata or collateral estoppel can limit or prevent the slower court from readjudicating findings of the faster court.[39] But international courts presiding over parallel proceedings may not have similar obligations.

While there is a common law presumption in U.S. courts of recognizing foreign judgments, standards vary by state and there are a number of exceptions.[40] And because the United States has not signed any international judgment-recognition agreements, recognition of U.S. judgments abroad is

sometimes enjoin parallel litigation to avoid races to judgment and higher litigation costs. *Compare* China Trade & Dev. Corp. v. M.V. Choong Yong, 837 F.2d 33, 36 (2d Cir. 1987) (finding the additional expense of a race to judgment, among other factors, insufficient to warrant an international antisuit injunction), *with* Seattle Totems Hockey Club, Inc. v. Nat'l Hockey League, 652 F.2d 852, 856 (9th Cir. 1981) (reasoning that an antisuit injunction was proper because allowing international parallel proceedings to continue "is likely to result in unnecessary delay and substantial inconvenience and expense" and "could result in inconsistent rulings or even a race to judgment").

[37] *See* Heiser, *supra* note 23, at 873 ("[T]here is no international equivalent to the Full Faith and Credit Clause."); Koeninger & Bales, *supra* note 14, at 476 ("[T]he [international] race to judgment is less effective because the foreign court is under no obligation to adhere to the doctrine of res judicata."). *Compare* Evergreen Marine Corp. v. Welgrow Int'l Inc., 954 F. Supp. 101, 104 (S.D.N.Y. 1997) (finding that the risk of inconsistent judgments supported staying the case in favor of a foreign parallel proceeding), *with* Laker Airways Ltd. v. Sabena, Belgian World Airlines, 731 F.2d 909, 926–27 (D.C. Cir. 1984) (reasoning that international "parallel proceedings on the same in personam claim should ordinarily be allowed to proceed simultaneously," assuming that a judgment by one court "can be pled as res judicata in the other"). For additional commentary on the relationship between foreign judgment recognition and international parallel proceedings, see Louise Ellen Teitz, *Both Sides of the Coin: A Decade of Parallel Proceedings and Enforcement of Foreign Judgments in Transnational Litigation*, 10 ROGER WILLIAMS U. L. REV. 1, 7–10 (2004) (discussing international approaches to parallel proceedings and explaining how duplicative litigation and recognition of foreign judgments are interrelated problems), and Austen L. Parrish, *Duplicative Foreign Litigation*, 78 GEO. WASH. L. REV. 237, 241–42 (2010) (describing how other countries, such as the United States, have fumbled issues accompanying international parallel proceedings).

[38] Koeninger & Bales, *supra* note 14, at 475; Heiser, *supra* note 23, at 873. For domestic parallel proceedings in two state courts, the Full Faith and Credit Clause requires the slower state court to recognize the faster state court's judgment. *See* U.S. CONST. art. IV, § 1; Heiser, *supra* note 23, at 873. Similarly, for parallel proceedings in a state court and a federal court, res judicata and Full Faith and Credit principles typically oblige the same result. Heiser, *supra* note 23, at 873 (citing 28 U.S.C. § 1738; Semtek Int'l Inc. v. Lockheed Martin Corp., 531 U.S. 497, 508–09 (2001); Marrese v. Am. Acad. of Orthopaedic Surgeons, 470 U.S. 373, 380 (1985)).

[39] RESTATEMENT (SECOND) OF JUDGMENTS §§ 17, 24 (AM. L. INST. 1982).

[40] *See* BORN & RUTLEDGE, *supra* note 14, at 1069–73, 1105–06 (describing varying approaches to foreign judgment recognition in U.S. courts and reasons U.S. courts might refuse to recognize foreign judgments); *see* Yuliya Zeynalova, *The Law on Recognition and Enforcement of Foreign Judgments: Is It Broken and How Do We Fix It?*, 31 BERKELEY. J. INT'L L. 150, 154–55 (2013) (explaining that comity "has produced a pro-recognition attitude in U.S. courts that has carried over to foreign-country judgments even in the absence of any bilateral or multilateral treaties").

even less predictable.[41] This uncertainty heightens the risks that parallel courts will reach inconsistent judgments and that complex and expensive litigation will continue long after the race to judgment is won.[42] Even when the slower court enforces the faster court's judgment, the waste of judicial resources seems inevitable.[43] Litigants who aim to delay, harass, or drive up litigation costs have double the opportunities to do so in the context of international parallel proceedings.

B. Gamesmanship and Settlement Pressure

Parallel litigation—whether international or domestic—often reeks of "indefensible gamesmanship, jeopardizing public faith in the judicial system."[44] There are two kinds of parallel suits: repetitive and reactive. Repetitive litigation occurs when the plaintiff in case one sues the same defendant over the same issues in a different forum in case two.[45] By contrast, reactive litigation occurs when the case-one defendant brings case two against the case-one plaintiff over the same issues in a different forum.[46] Allowing plaintiffs to file and pursue repetitive suits in multiple countries

---

[41] *See* Samuel P. Baumgartner, *Understanding the Obstacles to the Recognition and Enforcement of U.S. Judgments Abroad*, 45 N.Y.U. J. INT'L L. & POL. 965, 967 (2013) [hereinafter Baumgartner, *Understanding the Obstacles*] ("[T]here are jurisdictions that liberally recognize and enforce U.S. judgments . . . . At the other end of the spectrum, there are a number of countries where U.S. judgments are for the most part given no effect. In addition, the prospect of recognizing and enforcing a U.S. judgment abroad may depend on the domicile or the nationality of the defendant, the subject matter of the suit, the type of damages awarded, and the way the proceedings leading to the U.S. judgment were conducted."); BORN & RUTLEDGE, *supra* note 14, at 1074–75 (observing that "the complexity of U.S. litigation procedures, the size of damage awards, and the nature of U.S. jurisdictional claims" compound the difficulties of enforcing U.S. judgments abroad); Zeynalova, *supra* note 40, at 151 ("Enforcing U.S. court judgments abroad can prove especially difficult in light of divergent rules on jurisdiction, requirements for special service of process, reciprocity, and some foreign countries' public policy concerns over enforcing American jury awards carrying hefty punitive damages."); *see also* Samuel P. Baumgartner, *How Well Do U.S. Judgments Fare in Europe?*, 40 GEO. WASH. INT'L L. REV. 173, 173 (2008) (finding that, "on average, U.S. judgments face more obstacles in Europe than do European judgments in the United States").

[42] *See* Vertigan, *supra* note 36, at 158.

[43] *Cf.* James C. Rehnquist, *Taking Comity Seriously: How to Neutralize the Abstention Doctrine*, 46 STAN. L. REV. 1049, 1064–65 (1994) (describing domestic parallel proceedings as "patently wasteful"); *see* Parrish, *supra* note 37, at 244–45 ("The waste is magnified if the ultimate judgment in one action renders the other action meaningless."); Richard D. Freer, *Avoiding Duplicative Litigation: Rethinking Plaintiff Autonomy and the Court's Role in Defining the Litigative Unit*, 50 U. PITT. L. REV. 809, 832 (1989) ("Courts are a public resource, providing publicly financed resolution of private disputes. We pay for them, and we have a right to insist that their services not be squandered."); Redish, *supra* note 29, at 1353 (noting that the inefficiencies of parallel litigation "have been dramatically exacerbated by the litigation explosion of the last generation").

[44] Rehnquist, *supra* note 43, at 1064.

[45] Allan D. Vestal, *Repetitive Litigation*, 45 IOWA L. REV. 525, 525 (1960).

[46] Allan D. Vestal, *Reactive Litigation*, 47 IOWA L. REV. 11, 11 (1961).

seems unfair because of the potential for harassment.[47] While the motives driving repetitive suits are various and sometimes unclear, harassment of this kind can force opponents into settlement or add pressure to ongoing negotiations.[48] "[T]he same aura of gamesmanship surrounds reactive suits" because litigants can bring them to harass their opponents and raise litigation costs.[49] Nonetheless, reactive litigation may be "slightly more palatable" than repetitive litigation as a response to forum shopping because the reactive plaintiff did not choose the first forum and might fairly prefer another.[50]

Whether repetitive or reactive, however, suits intended to exhaust an opponent's limited resources, pressure a favorable settlement, or circumvent a forum selection agreement can unfairly tilt the scales.[51] Accordingly, some courts consider the motives driving duplicative suits important to the question of whether parallel proceedings should continue.[52] In *Continental Insurance Co. v. Cumberland Trucking Co.*, for example, the federal district court abstained from ruling on a reactive suit, in favor of a parallel state court action, after inferring bad faith because the reactive plaintiff sued during settlement negotiations.[53] Like domestic parallel proceedings, international parallel proceedings raise concerns of unfairness, gamesmanship, and settlement pressure—only the stakes may be higher in the international context due to travel expenses and nonrecyclable litigation costs resulting from differences in law, language, custom, and procedure.[54]

---

[47] *See* Redish, *supra* note 29, at 1353; Vestal, *supra* note 45, at 526.

[48] Vestal, *supra* note 45, at 526; *see also* Furuta, *supra* note 29, at 5–6 (observing that coercing a favorable settlement through duplicative litigation is unfair).

[49] Rehnquist, *supra* note 43, at 1065; *see* Vestal, *supra* note 46, at 13–17 (discussing the reasons defendants file reactive suits and the problems those suits raise).

[50] Rehnquist, *supra* note 43, at 1065; *see also* Gibson, *supra* note 29, at 198 (characterizing the defendant in the first forum as "the party who lost the race to the courthouse," and arguing that filing speed should not dictate the forum); David W. Robertson, *Forum Non Conveniens in America and England: "A Rather Fantastic Fiction,"* 103 LAW Q. REV. 398, 398 (1987) ("[D]efendants in transnational cases must be empowered to resist plaintiffs' unwarrantable assertions of jurisdiction.").

[51] *See* Furuta, *supra* note 29, at 5–6; Gibson, *supra* note 29, at 196–98; Flavia Foz Mange, *Anti-Suit Injunctions in International Arbitration: Protecting the Procedure or Pushing the Settlement*, 4 DISP. RESOL. INT'L 191, 206 (2010).

[52] Gibson, *supra* note 29, at 259–60; *see* Laker Airways Ltd. v. Sabena, Belgian World Airlines, 731 F.2d 909, 915 (D.C. Cir. 1984) (noting that the defendants had filed the foreign action "for the sole purpose of terminating the United States claim"); Continental Ins. Co. v. Cumberland Trucking Co., 670 F. Supp. 827, 829 (N.D. Ill. 1987). *But see* Athina Invs. Ltd. v. Pinchuk, 443 F. Supp. 2d 177, 181 (D. Mass. 2006) (denying motion for foreign antisuit injunction over plaintiffs' argument that the reactive suit intentionally threatened their financial ability to litigate the domestic action).

[53] *Continental Ins. Co.*, 670 F. Supp. at 829.

[54] *See* George A. Bermann, *The Use of Anti-Suit Injunctions in International Litigation*, 28 COLUM. J. TRANSNAT'L L. 589, 619–20 (1990) (noting further that "most foreign countries cannot be expected . . . to decline jurisdiction on discretionary grounds such as forum non conveniens and thus themselves police vexatious or oppressive litigation").

C. Balancing Comity

Unlike domestic parallel proceedings, international parallel proceedings can implicate foreign relations. For example, a U.S. court may worry that deciding a case or enjoining parallel litigation in a foreign forum will insult the foreign sovereign or provoke retaliation.[55] While both domestic and foreign antisuit injunctions require consideration of comity, comparing its role in domestic and international parallel proceedings urges against overreliance on comity in the international context.

The term "international comity" is difficult to define—let alone balance against competing interests.[56] U.S. courts have not only defined "comity" uniquely but leaned on the concept more heavily than any other legal system.[57] In 1895, the Supreme Court described "comity" in *Hilton v. Guyot* as

> neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But [comity] is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.[58]

Since *Hilton*, comity's use in the United States has expanded toward facilitating predictability to support international commerce, maintaining the separate foreign-relations authority of the political branches, fostering

---

[55] *See, e.g.*, *Laker Airways*, 731 F.2d at 937–45 ("[C]omity serves our international system like the mortar which cements together a brick house. No one would willingly permit the mortar to crumble or be chipped away for fear of compromising the entire structure. . . . [C]omity compels national courts to act at all times to increase the international legal ties that advance the rule of law within and among nations."); *see also* Bermann, *supra* note 54, at 606 (observing that "anti-suit injunctions [both] find their greatest utility in the international setting" and "have their greatest capacity for mischief"); *infra* Part II (discussing international comity's role in decisions on foreign antisuit injunction motions).

[56] *See* Joel R. Paul, *Comity in International Law*, 32 HARV. INT'L L.J. 1, 55 (1991) ("The rhetoric of comity generally refers to all or some of three objectives: avoiding interference with the conduct of foreign relations by the political branches; facilitating international transactions by making the outcome of such cases more predictable in terms of governing law or choice of forum; and encouraging foreign courts to accord reciprocal respect to the law of the United States."); Calamita, *supra* note 16, at 614–15 (distinguishing "prescriptive comity" from "adjudicatory comity"); *see also* Thomas Schultz & Niccolò Ridi, *Comity in US Courts*, 10 NE. U. L. REV. 280, 287–88 (2018) (observing that comity "seems to have countless meanings").

[57] Schultz & Ridi, *supra* note 56, at 282–88, 354–55, 363–65 (exploring the roots and transformation of comity in American law and showing that American comity is unique in "the sheer number of doctrines and rules" which it influences).

[58] 159 U.S. 113, 163–64 (1895); *see* HAROLD HONGJU KOH, TRANSNATIONAL LITIGATION IN UNITED STATES COURTS 19–20 (2008) (noting the expansion of comity in the United States after *Hilton* by which courts have applied comity "not simply to defer to, but also to recognize and enforce domestically, the decisions of foreign sovereigns and courts").

reciprocity, and preventing retaliation by foreign nations.[59] In *Laker Airways v. Sabena*, for instance, the D.C. circuit court expressed fear that ordering a party to cease foreign litigation might inspire the foreign court to issue a mirror-image order, leaving the parties without a forum.[60] More recently, Professor William Dodge considered comity's various uses by U.S. courts and distilled its meaning to "deference to foreign government actors that is not required by international law but is incorporated in domestic law."[61]

Many scholars have argued that international comity should play a significant role in U.S. courts' treatment of international parallel proceedings.[62] Specifically, comity may promote predictability in dispute resolution[63] and avoid retaliation.[64] Comity enthusiasts have also lauded the

---

[59] *See* Paul, *supra* note 56, at 55; *see also* Turner Ent. Co. v. Degeto Film GmbH, 25 F.3d 1512, 1519 n.10 (11th Cir. 1994) ("[H]ighlighting the vague meaning of international comity, [it] has been defined in various places as 'the basis of international law, a rule of international law, a synonym for private international law, a rule of choice of law, courtesy, politeness, convenience or goodwill between sovereigns, a moral necessity, expediency, reciprocity or "consideration of high international politics concerned with maintaining amicable and workable relationships between nations."'" (quoting Paul, *supra* note 56, at 3–4 & nn.4–14)).

[60] *Laker Airways*, 731 F.2d at 927 ("[Antisuit injunctions] effectively restrict the foreign court's ability to exercise its jurisdiction. If the foreign court reacts with a similar injunction, no party may be able to obtain any remedy.").

[61] William S. Dodge, *International Comity in American Law*, 115 COLUM. L. REV. 2071, 2079 (2015).

[62] *See* Calamita, *supra* note 16, at 605 (contending that comity "provides the *key* for the Supreme Court and other federal courts to deal dynamically with international parallel proceedings"); Steven R. Swanson, *The Vexatiousness of a Vexation Rule: International Comity and Antisuit Injunctions*, 30 GEO. WASH. J. INT'L L. ECON. 1, 36 (1996) ("[C]omity . . . requires consideration of the practical needs of the forum state and the international system in creating a smoothly functioning mechanism for dispute resolution. This goal has become increasingly important as the world becomes more interconnected."); Parrish, *supra* note 37, at 277 ("[C]omity is a way that nation-states surrender a small degree of sovereignty in the short term to restore control lost to external forces over the long term."); Robert Wai, *Transnational Liftoff and Juridicial Touchdown: The Regulatory Function of Private International Law in an Era of Globalization*, 40 COLUM. J. TRANSNAT'L L. 209, 248 (2002) ("[A] broader sense of comity by U.S. courts might assist regulatory purposes by permitting recognition of progressive public regulation statutes of foreign jurisdictions."); Bermann, *supra* note 54, at 608 ("[T]he equitable nature of the [antisuit injunction] renders it an especially appropriate subject of the special consideration and reserve evoked by the notion of international comity."); Vertigan, *supra* note 36, at 160 (arguing that enjoining foreign parallel litigation may insult foreign courts and inspire retaliation); Haig Najarian, Note, *Granting Comity Its Due: A Proposal to Revive the Comity-Based Approach to Transnational Antisuit Injunctions*, 68 ST. JOHN'S L. REV. 961, 973–74 (1994) (arguing that requiring "an affirmative showing that foreign relations will somehow be adversely affected" before denying a foreign antisuit injunction motion "gives short shrift to the authority that established comity as a guiding principle of American jurisprudence").

[63] *See* Swanson, *supra* note 62, at 36.

[64] *See* Wai, *supra* note 62, at 248; Vertigan, *supra* note 36, at 160.

doctrine's history[65] and flexibility.[66] But the point is controversial. According to its critics, comity's vagueness obscures potential clashes between foreign and domestic policy, underenforces the latter, and encourages results-based decisions—all of which create unpredictability for litigants.[67] Professor Dodge has provided clarity to comity's meaning and shown that, in some contexts, courts have fashioned comity into rules as opposed to nebulous standards.[68] Yet, he acknowledges that comity's use in antisuit injunction decisions is discretionary.[69] So, in deciding antisuit injunctions at least, deferring to the ambiguous notion of comity is troubling because it can prevent courts from considering the actual harms of duplicative litigation.

U.S. courts also invoke comity in the context of domestic parallel proceedings.[70] Comparing comity's role in international and domestic parallel proceedings reveals problems with its use in the international context. For example, the *Laker Airways* court assumed that comity should play a similar role in international and domestic parallel proceedings but should weigh more heavily in federal courts' decisions whether to enjoin

---

[65] *See* Parrish, *supra* note 37, at 277; Najarian, *supra* note 62, at 973.

[66] *See* Calamita, *supra* note 16, at 605; Bermann, *supra* note 54, at 608; *see also* Schultz & Ridi, *supra* note 56, at 300 ("[C]omity[] is 'flexible' because it takes different shapes depending on the goals states need to accomplish."); Dodge, *supra* note 61, at 2131 (observing that the flexible use of comity in the private-interest context may allow courts to promote fairness and "police abusive litigation tactics").

[67] *See* Michael D. Ramsey, *Escaping "International Comity,"* 83 IOWA L. REV. 893, 893–94 (1998) ("'International comity' is frequently invoked by courts but rarely defined with precision. . . . [It] inevitably invites intuitive adjudication, and hence litigation-inspiring *ex ante* unpredictability."); Paul, *supra* note 56, at 77 (concluding that "by blurring the lines that divide domestic and international law and policy . . . , comity obscures the underlying policy conflict without necessarily insuring reciprocal respect for domestic law, facilitating international commerce, or avoiding interference with foreign relations"); *see also* Gardner, *supra* note 16, at 2310–11 (explaining how courts have confused distinct lines of international comity precedent, fostering a concerning degree of judicial discretion in transnational disputes); Tan, *supra* note 21, at 303–13 (criticizing unprincipled balancing of comity against unrelated policy concerns and proposing a limited use of comity in antisuit injunction decisions); Louise Weinberg, *Against Comity*, 80 GEO. L.J. 53, 55 (1991) (arguing that comity "is discriminatory and substantively damaging to the rule of law").

[68] Dodge, *supra* note 61, at 2078, 2125–30 (explaining that comity has taken a "rule-like" shape in foreign sovereign immunity doctrine, for example).

[69] *Id.* at 2130 (recognizing that standards have "clearly predominate[d] over rules" with respect to foreign antisuit injunction and forum non conveniens doctrines). Notably, a unanimous Supreme Court opinion in *Animal Science Products v. Hebei Welcome Pharmaceutical* reversed the Second Circuit for giving blanket deference to a foreign government's construction of its own law, emphasizing that the "appropriate weight" of international comity "will depend upon the circumstances." 138 S. Ct. 1865, 1869, 1873 (2018). "Given the world's many and diverse legal systems," the Court explained, "no single formula or rule will fit all cases." *Id.* at 1873. Although *Animal Science* discusses international comity as a discretionary tool in a different context, the Court's reasoning should also urge against unconsidered reliance on discretionary comity in antisuit injunction decisions. *See id.*

[70] *See* Younger v. Harris, 401 U.S. 37, 44 (1971); Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 282 (2005) (citing Colo. River Water Conservation Dist. v. United States, 424 U.S. 800 (1976)); Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 11 (1987).

international parallel proceedings.[71] Of course, foreign nations may be more sensitive to intrusive judicial decisions than domestic states. Yet, contextual differences between domestic and international parallel proceedings suggest that deference to foreign courts can compromise U.S. interests in ways that deference to state courts would not.

Principal among these differences is that state courts have a constitutional duty, per the Supremacy Clause, to uphold federal law.[72] Foreign courts do not. And when federal courts defer to state court proceedings, the possibility of Supreme Court review of state courts' decisions on federal law remains open.[73] In contrast, the Supreme Court cannot directly review the decisions of any foreign courts. Additionally, domestic federal and state courts are theoretically in parity,[74] whereas foreign courts are not fungible with any U.S. courts. Further, by enacting the anti-injunction statute, Congress has limited the circumstances in which federal

---

[71] *See* Laker Airways Ltd. v. Sabena, Belgian World Airlines, 731 F.2d 909, 927 n.52 (D.C. Cir. 1984) ("[S]trong policies of comity and mutual respect . . . limit the discretion of courts to interfere with concurrent proceedings. These policies, which find such compelling expression in ordering the intranational affairs of our dual court system, apply *a fortiori* to injunctions affecting the exercise of jurisdiction in foreign countries." (citing Canadian Filters (Harwich) Ltd. v. Lear-Siegler, Inc., 412 F.2d 577, 578 (1st Cir. 1969))); *see also* Gardner, *supra* note 16, at 2333 (observing that federal courts' varying uses of international comity to deal with international parallel proceedings "all start from an analogy to the treatment of federal-state parallel litigation").

[72] U.S. CONST. art. VI, cl. 2 (mandating that the "Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby"). Similarly, the Full Faith and Credit Clause and statute require mutual recognition of domestic judgments. *See* U.S. Const. art. IV, § 1; 28 U.S.C. § 1738; *supra* notes 38–39 and accompanying text.

[73] *See* Martin H. Redish, *Supreme Court Review of State Court "Federal" Decisions: A Study in Interactive Federalism*, 19 GA. L. REV. 861, 899–904 (1985) (discussing the Supreme Court's authority to review state court decisions).

[74] *See* Rehnquist, *supra* note 43, at 1055 ("[A]bsent direction from Congress, federal and state courts are properly seen as functional equivalents comprising a single national system."). *But see* Burt Neuborne, *The Myth of Parity*, 90 HARV. L. REV. 1105, 1105–06 (1977) (arguing that state courts "are less likely to be receptive to vigorous enforcement of federal constitutional doctrine"); Martin H. Redish, *Judicial Parity, Litigant Choice, and Democratic Theory: A Comment on Federal Jurisdiction and Constitutional Rights*, 36 UCLA L. REV. 329, 335 (1988) ("[T]he absence of prophylactic protections of state judicial salary and tenure is so inconsistent with concepts of basic fairness as to violate procedural due process."); Akhil Reed Amar, *Parity as a Constitutional Question*, 71 B.U. L. REV. 645, 646 (1991) (arguing that the Constitution presumes "disparity between federal and state courts—at least where the question is which court may be given the last word on issues of federal law"); Erwin Chemerinsky, *Ending the Parity Debate*, 71 B.U. L. REV. 593, 600 (1991) ("A meaningful approach to federal jurisdiction must transcend the focus on parity."). For a call to refocus the parity conversation on empirically measurable criteria to improve the performance of both court systems—rather than determine which court system is better—see Meredith R. Aska McBride, *Parity as Comparative Capacity: A New Empirics of the Parity Debate*, 90 U. CIN. L. REV. 68, 69–72 (2021).

courts may enjoin state court proceedings.[75] No such statute limits the authority of federal courts to enjoin foreign proceedings.[76] These differences all suggest that deference to foreign courts undermines the United States' interests in enforcing U.S. law and adjudicating disputes Congress has determined fit for resolution by federal courts to a greater extent than would deference to state courts.[77]

Of course, many cases belong in foreign tribunals,[78] and I do not suggest that antisuit injunctions are a better remedy to parallel litigation than abstention. The choice is case-specific. Still, two forums are not better than one, and courts' options to consolidate parallel proceedings depend on the motions before them. When courts must choose between enjoining international parallel proceedings and doing nothing, the comity reflex—without evidence of potential harm to foreign relations—risks unfairness and inefficiency by ignoring more immediate dangers to litigants.

Naturally, the United States' interests in dispute resolution and policy enforcement vary: not every case with a foreign parallel counterpart is likely to blow up into "a full-scale diplomatic episode" as *Laker Airways* did.[79] Such variance should counsel against prophylactic reliance on international comity. So long as foreign antisuit injunctions remain in U.S. courts' toolboxes, some comity infringement may be unavoidable.[80] Courts will

---

[75] *See* 28 U.S.C. § 2283; *see also* Redish, *The Doctrine of* Younger v. Harris*: Deference in Search of a Rationale*, 63 CORNELL L. REV. 463, 484–85 (1978) (explaining that the anti-injunction statute's historical development influenced the Supreme Court's creation of comity-based abstention in *Younger*).

[76] *See supra* Section I.A.

[77] *See* Ramsey, *supra* note 67, at 906–31 (explaining the doctrinal limits of extraterritorial application of U.S. law and arguing that comity's vagueness leads to "*ad hoc* judicial policymaking"); Weinberg, *supra* note 67, at 55; *see also* Elliott E. Cheatham & Willis L.M. Reese, *Choice of the Applicable Law*, 52 COLUM. L. REV. 959, 961 (1952) ("[A] court must follow the dictates of its own legislature to the extent that these are constitutional."); *see also* Paul, *supra* note 56, at 75–76 (observing that the Constitution divides foreign-relations power between Congress and the Executive Branch, while "courts are neither constitutionally competent to rewrite legislation, nor equipped to negotiate political disputes"); Stephen B. Burbank, *Jurisdictional Equilibration, the Proposed Hague Convention and Progress in National Law*, 49 AM. J. COMPAR. L. 203, 213 (2001) (calling the use of doctrine originating in domestic parallel proceedings in international parallel proceedings "indefensible"). Discussing abstention in favor of foreign parallel proceedings, Professor Gardner has argued that separation-of-powers concerns are greater in the context of international parallel proceedings than federal-state domestic parallel proceedings because "state courts operate within the same common law context as the federal courts and are bound by the same constitutional and federal statutory constraints." Gardner, *supra* note 16, at 2334.

[78] *See* Robertson, *supra* note 50, at 398.

[79] Bermann, *supra* note 54, at 608 n.75 (citing Stuart Auerbach, *Jury Probe of Airlines Called Off*, WASH. POST (Nov. 20, 1984), https://www.washingtonpost.com/archive/politics/1984/11/20/jury-probe-of-airlines-called-off/e6738a3c-f3b5-4066-bb7c-26b4ef3377d0 [https://perma.cc/7KPY-Q4M2]).

[80] *See* Tan, *supra* note 21, at 312 ("Unless the United States courts . . . give up the anti-suit injunction remedy altogether, they must not simply place the crude concept of comity statically on one end of the scales to be balanced against other considerations, especially since there are hardly any guidelines on how to perform this balancing exercise.").

nevertheless foster predictability by expecting litigants to articulate precise foreign-relations concerns before giving international comity more weight than efficiency and fairness.

* * *

In sum, international parallel proceedings waste courts' and litigants' resources and can create inconsistent judgments. Further, parties can exploit international parallel proceedings to harass opponents and exert settlement pressure. International comity has proven difficult for courts to define and apply in disputes over international parallel proceedings—a problem the next section will explore further in the context of foreign antisuit injunction motions.[81] In trying to measure the settlement effect,[82] this Note discovers the first empirical evidence of a significant rise in settlement after courts allowed foreign duplicative litigation to continue.[83]

II. FOREIGN ANTISUIT INJUNCTIONS: A SPLIT OVER INTERNATIONAL COMITY

The desire for certainty, efficiency, fairness, convenience, or deference to a foreign sovereign may motivate a court to end an international race before a final judgment.[84] Likewise, parties to international parallel proceedings often prefer exclusive litigation in a single forum for similar reasons, including the expense of duplicative litigation, the risk of inconsistent judgments, or the application of different and unfavorable law.[85] A few common law remedies that consolidate foreign duplicative litigation are available to U.S. courts: antisuit injunctions, lis alibi pendens stays, and forum non conveniens dismissals.[86]

---

[81] *See infra* Part II.

[82] *See infra* Part III.

[83] *See infra* Part IV.

[84] *See, e.g.*, Turner Ent. Co. v. Degeto Film GmbH, 25 F.3d 1512, 1523 (11th Cir. 1994) (finding that "international comity, fairness and efficiency point[ed] overwhelmingly" toward international abstention); *see also* Heiser, *supra* note 23, at 855 (noting exceptions to the practice of allowing international parallel proceedings to continue).

[85] Teresa D. Baer, *Injunctions Against the Prosecution of Litigation Abroad: Towards a Transnational Approach*, 37 STAN L. REV. 155, 155 (1984); *see* BORN & RUTLEDGE, *supra* note 14, at 531. Of course, some litigants may hope to maintain multiple lawsuits in international forums to harass their opponents or gain an advantage through exhaustion of their opponents' resources. *See* Vertigan, *supra* note 36, at 157.

[86] *See* BORN & RUTLEDGE, *supra* note 14, at 532; *supra* notes 14–17 and accompanying text.

U.S. courts have broad authority to compel behavior of parties over whom they have personal jurisdiction—notwithstanding national borders.[87] This includes the power to issue foreign antisuit injunctions ordering a party not to litigate proceedings in a foreign forum.[88] Generally, U.S. federal courts agree that a foreign antisuit injunction motion must satisfy two threshold requirements: (1) the parties and issues in the parallel proceedings must be the same; and (2) the present case's resolution must be dispositive of the foreign case.[89]

While the equitable power of a court to enjoin litigation abroad does not directly implicate foreign sovereignty,[90] most U.S. courts recognize that antisuit injunctions "effectively restrict the foreign court's ability to exercise its jurisdiction."[91] Therefore, because of the ambiguous force of international

---

[87] BORN & RUTLEDGE, *supra* note 14, at 551 n.34. *But see* Bermann, *supra* note 54, at 604–05 (suggesting that "[j]udicial interference with a foreign country's exercise of adjudicatory authority has a potential for embarrassing the political branches of government" although conceding that "no federal case [has] categorically reject[ed] international anti-suit injunctions on separation of powers grounds").

[88] BORN & RUTLEDGE, *supra* note 14, at 551–52, 560; *see* Cole v. Cunningham, 133 U.S. 107, 116–19 (1890) (describing the "well settled" equitable power of U.S. courts—with roots in English common law—to control behavior of litigants abroad); RESTATEMENT (SECOND) CONFLICT OF LAWS § 84 cmt. h (AM. L. INST. 1971) (explaining that "a court may enjoin a person over whom it has personal jurisdiction from bringing suit in . . . an inappropriate forum," although such injunctions are only appropriate "in extreme circumstances"); *see also* W. Elec. Co. v. Milgo Elec. Corp., 450 F. Supp. 835, 837 (S.D. Fla. 1978) (noting that a U.S. court "has the power to enjoin a party over whom it has personal jurisdiction from pursuing litigation before a foreign tribunal"). For a historical discussion of antisuit injunctions, their origins in English common law courts, subsequent use in domestic parallel proceedings in both Great Britain and the United States, and the eventual adoption of antisuit injunction doctrine into the context of international parallel proceedings, see Bermann, *supra* note 54, at 593–604.

[89] Heiser, *supra* note 23, at 857. But see *MWK Recruiting Inc. v. Jowers*, 833 F. App'x 560, 564–65 (5th Cir. 2020) (distinguishing *Allendale Mut. Ins. Co. v. Bull Data Sys., Inc.*, 10 F.3d 425, 430–31 (7th Cir. 1993)), which discusses the first threshold requirement, rejects the more flexible logical-relationship test, and requires instead that parallel cases involve identical claims or the same or similar legal bases. *See also* Tan, *supra* note 21, at 313–23 (exploring variation in the second threshold requirement).

[90] *See* Ernest J. Messner, *The Jurisdiction of a Court of Equity over Persons to Compel the Doing of Acts Outside the Territorial Limits of the State*, 14 MINN. L. REV. 494, 495–96 (1930) (reasoning that court orders controlling behavior of parties abroad do not direct proceedings of a foreign court, and accordingly, do not implicate the foreign court's sovereignty).

[91] Laker Airways Ltd. v. Sabena, Belgian World Airlines, 731 F.2d 909, 927 (D.C. Cir. 1984); BORN & RUTLEDGE, *supra* note 14, at 552; *see* China Trade & Dev. Corp. v. M.V. Choong Yong, 837 F.2d 33, 35–36 (2d Cir. 1987) (reasoning that "an anti-foreign-suit injunction should be 'used sparingly'" and granted "only with care and great restraint" in consideration of international comity, even if "the injunction operates only against the parties, and not directly against the foreign court" (first quoting United States v. Davis, 767 F.2d 1025, 1038 (2d Cir. 1985); and then quoting Canadian Filters (Harwich) Ltd. v. Lear-Siegler, Inc., 412 F.2d 577, 578 (1st Cir. 1969))); *cf.* Donovan v. City of Dallas, 377 U.S. 408, 413 (1964) ("[T]hat an injunction issues only to the parties before the court, and not to the court, is no evasion of the difficulties that are the necessary result of an attempt to exercise that power over a party who is a litigant in another and independent forum." (quoting Peck v. Jenness, 48 U.S. 612, 625 (1849))).

comity,[92] lower courts have split over the legal standard applicable to foreign antisuit injunctions beyond the threshold requirements.[93]

The restrictive approach—which reigns in the First, Second, Third, Sixth, Eighth, Eleventh, and District of Columbia Circuits—wields international comity with fervor, strongly disfavoring foreign antisuit injunctions.[94] The restrictive presumption against foreign antisuit injunctions will give way only where (1) a foreign case threatens a U.S. court's jurisdiction or an important public policy; and (2) domestic interests outweigh prophylactic international-comity concerns.[95] While there is some divergence among the restrictive circuits on when antisuit injunctions are appropriate, "duplication of parties and issues alone is not sufficient."[96]

The permissive approach, by contrast, values efficiency over comity. In the Fifth, Seventh, and Ninth Circuits, foreign parallel litigation with the same parties and issues will generally justify a foreign antisuit injunction.[97] For permissive circuits, international comity takes a back seat to concerns of avoiding waste, inconvenience, delay, vexation, and inconsistent judgments—all of which often accompany duplicative litigation.[98]

---

[92] *See supra* Section I.C; Heiser, *supra* note 23, at 858.

[93] *See* Goss Int'l Corp. v. Man Roland Druckmaschinen Aktiengesellschaft, 491 F.3d 355, 359–61 (8th Cir. 2007) (explaining the circuit split and joining the dominant restrictive approach).

[94] *See* Heiser, *supra* note 23, at 857–58. The Eleventh Circuit has endorsed, but not adopted, the restrictive approach. BORN & RUTLEDGE, *supra* note 14, at 553 (citing Canon Latin Am., Inc. v. Lantech (CR), S.A., 508 F.3d 597 (11th Cir. 2007)).

[95] Heiser, *supra* note 23, at 857–58 (citing *Goss Int'l*, 491 F.3d at 359–60); Quaak v. Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren, 361 F.3d 11, 17 (1st Cir. 2004); Gen. Elec. Co. v. Deutz AG, 270 F.3d 144, 161 (3d Cir. 2001); Gau Shan Co. v. Bankers Tr. Co., 956 F.2d 1349, 1355 (6th Cir. 1992); *China Trade*, 837 F.2d at 35–37).

[96] *Laker Airways*, 731 F.2d at 928–29; *see* BORN & RUTLEDGE, *supra* note 14, at 552–53 (pointing out subtle variations among the restrictive circuits). The First Circuit, for example, rejected the permissive approach outright, then—reasoning that "comity, like beauty, sometimes is in the eye of the beholder"—adopted a more flexible spin on the restrictive approach. *Quaak*, 361 F.3d at 17–19.

[97] BORN & RUTLEDGE, *supra* note 14, at 553 (citing Microsoft Corp. v. Motorola Inc., 696 F.3d 872, 887–89 (9th Cir. 2012)); *see* Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, 335 F.3d 357, 366 (5th Cir. 2003); Seattle Totems Hockey Club v. Nat'l Hockey League, 652 F.2d 852, 856 (9th Cir. 1981). The Seventh Circuit has favored this "laxer" approach without adopting it outright. *See* 1st Source Bank v. Neto, 861 F.3d 607, 613 n.2 (7th Cir. 2017) (citing Allendale Mut. Ins. Co. v. Bull Data Sys., Inc., 10 F.3d 425, 431 (7th Cir. 1993)); Phillips Med. Sys. Int'l v. Bruetman, 8 F.3d 600, 605 (7th Cir. 1993). The Fourth Circuit, which has seen few cases with foreign parallel counterparts, has not yet picked a side. *See* BAE Sys. Tech. Sol. & Servs., Inc. v. Republic of Korea's Def. Acquisition Program, 884 F.3d 463, 479–80 (4th Cir. 2018) (affirming the denial of a foreign antisuit injunction without deciding between the permissive and restrictive approaches); Custom Polymers PET, LLC v. Gamma Meccanica Spa, 185 F. Supp. 3d 741, 757–61 (D.S.C. 2016) (applying both approaches).

[98] *See* Heiser, *supra* note 23, at 858; *Microsoft Corp.*, 696 F.3d at 886; H-D Michigan, LLC v. Hellenic Duty Free Shops S.A., 694 F.3d 827, 848 (7th Cir. 2012); Kaepa, Inc. v. Achilles Corp., 76 F.3d

Put simply, the restrictive and permissive approaches divide over how to weigh international comity. Restrictive circuits place the burden on foreign antisuit injunction movants to overcome a strong presumption that enjoining parallel litigation will infringe comity.[99] Permissive circuits, by contrast, require parties opposing foreign antisuit injunctions to demonstrate that the dangers of infringing international comity outweigh efficiency and fairness.[100] As the above discussion of international comity suggests, the permissive approach is preferable considering the awkwardness of transplanting comity from domestic to international parallel proceedings, varying foreign-relations concerns among international disputes, and the difficulty of balancing comity against more concrete policy concerns.[101]

The following Parts attempt to measure the relationship between settlement rates and foreign antisuit injunction denials, finding early evidence of a positive correlation.[102] Larger studies remain necessary to confirm the existence of the settlement effect and determine whether its cause is the expense of international parallel proceedings. Meanwhile, this Note relies on case studies to argue that the permissive approach is more capable of preventing parties from exerting unfair settlement pressure.[103]

III. TESTING THE SETTLEMENT EFFECT

Driving this study is the hypothesis that when U.S. courts deny antisuit injunction motions, settlement rates will rise. Because parallel proceedings are especially expensive when the forums are in different countries—requiring higher travel expenses and attorneys' fees[104]—the costs of foreign

624, 627 (5th Cir. 1996). For a criticism that the liberal approach "ignores comity," see Swanson, *supra* note 62, at 33–37 (1996). *But see* Tan, *supra* note 21, at 301–12 (observing the difficulty of balancing comity against conflicting equitable factors).

[99] *See supra* notes 93–96 and accompanying text.

[100] *See supra* notes 97–98 and accompanying text.

[101] *See supra* Section I.C.

[102] *See infra* Parts III, IV.

[103] While I focus on U.S. courts' decisions on motions to enjoin foreign proceedings to measure the connection between international parallel proceedings and settlement, and I reach a normative conclusion that U.S. courts should apply a permissive standard to these motions, I do not suggest that U.S. proceedings should have priority over foreign proceedings. Nor do I assume that foreign proceedings are more likely to be filed with harassing intent than U.S. proceedings. Rather, since litigating in U.S. courts is more expensive than in any other country, the opposite could be true. And a mirror-image study—focusing on motions to stay U.S. proceedings in favor of foreign proceedings—might find a more extreme rise in settlement after denial.

[104] *See supra* note 54 and accompanying text. While in most of the United States litigants pay their own attorneys' fees regardless of the outcome, many countries outside the United States require the losing party to pay the winner's attorneys' fees, which could affect litigation costs and incentives. *See* Theodore Eisenberg & Geoffrey P. Miller, *The English Versus the American Rule on Attorney Fees: An Empirical*

duplicative litigation allow coercion of favorable settlements.[105] And the influence of litigation costs on litigation strategy may be at its strongest when one of the courts presiding over international parallel proceedings is in the United States, home of the world's highest litigation costs.[106]

While the impact of international parallel proceedings on settlement has inspired criticism,[107] no previous scholarship has measured the settlement effect.[108] In testing the connection between foreign duplicative litigation and settlement, this Note does not assume that a high settlement rate is an evil in itself.[109] To the contrary, settlement offers a fast and efficient end to many

Study on Public Company Contracts, 98 CORNELL L. REV. 327, 328–29 (2013). For example, the English loser-pays rule heightens risk and tends to encourage greater expenses in court. *Id.* at 341. Otherwise, there are conflicting theories and few empirical studies on how attorneys'-fees rules affect litigation strategy. *Id.* at 334–41; *see also* Yun-chien Chang & Daniel Klerman, *Settlement Around the World: Settlement Rates in the Largest Economies* 21–23 (U.S.C. Gould Sch. of L. Ctr. for L. & Soc. Sci., Legal Studies Research Paper Series No. 21-8, 2021), https://papers.ssrn.com/a=3793078 [https://perma.cc/7CUC-26AE] (comparing settlement rates in seventeen loser-pays countries with those of three countries without fee shifting and finding "weak" evidence of a higher settlement rate in the non-fee-shifting countries).

[105] *See* Vestal, *supra* note 45, at 526 ("If actions are brought in a number of jurisdictions, the defendant is forced to hire additional attorneys and spend more time in handling the numerous law suits.").

[106] *See* U.S. CHAMBER INST. FOR LEGAL REFORM, INTERNATIONAL COMPARISONS OF LITIGATION COSTS: CANADA, EUROPE, JAPAN, AND THE UNITED STATES 2, 3, 6 (2013), https://instituteforlegalreform.com/wp-content/uploads/media/ILR_NERA_Study_International_Liability_Costs-update.pdf [https://perma.cc/R5CJ-BUD6] (measuring general liability insurance costs of companies in the United States, Europe, and Canada to conclude that the United States has by far "the highest estimated liability costs in proportion to GDP"); LAWS. FOR CIV. JUST., CIV. JUST. REFORM GRP. & U.S. CHAMBER INST. FOR LEGAL REFORM, LITIGATION COST SURVEY OF MAJOR COMPANIES 3 (2010), https://www.uscourts.gov/sites/default/files/litigation_cost_survey_of_major_companies_0.pdf [https://perma.cc/ZT9B-MPAZ] ("[M]ulti-national company respondents to the survey spend a disproportionate amount on litigation in the United States relative to their expenditures in foreign jurisdictions. Depending on the year, relative U.S. costs were between four and nine times higher than non-U.S. costs (as a percent of revenue)."); *see also* Chang & Klerman, *supra* note 104, at 20–21 (comparing settlement rates of twenty countries and finding, on average, higher settlement rates in countries with high litigation costs).

[107] *See supra* Section I.B.

[108] Settlement effect refers to the impact on the settlement rate of a court's decision to allow parallel proceedings to continue.

[109] Full discussion of the benefits and drawbacks of settlement is beyond the scope of this Note.

disputes,[110] and the U.S. legal system promotes it accordingly.[111] Nonetheless, a higher settlement rate in the context of international parallel proceedings, after efforts to consolidate proceedings have failed, could suggest that the potential for gamesmanship and waste unfairly advantages parties with deeper pockets. So the settlement effect should interest courts deciding motions to enjoin foreign duplicative litigation.

This study charts a path toward measuring the settlement effect by observing how often cases settled after federal district courts denied foreign antisuit injunction motions. The study codes additional factors with the potential to impact settlement rates, acknowledging the unavailability of data on other possibly impactful variables. Hypothesizing that parallel proceedings tend to force parties to settle, I expect the settlement rate to be higher among cases where courts have denied relief. Because of this study's limitations—including possible selection bias and a lack of data on potentially influential variables—the results cannot support causal inferences about international parallel proceedings and settlement. But finding a higher settlement rate after antisuit injunction denials at least shows that this area deserves greater empirical attention. Future studies of parallel

---

[110] *See* Jeffrey R. Seul, *Settling Significant Cases*, 79 WASH. L. REV. 881, 886 (2004) (arguing that "negotiation should be viewed as a credible alternative to litigation for resolving disputes that raise important public policy questions"); Timothy Schnabel, *The Singapore Convention on Mediation: A Framework for the Cross-Border Recognition and Enforcement of Mediated Settlements*, 19 PEPP. DISP. RESOL. L.J. 1, 2 (2019) (explaining that the "primary goal of the [Singapore] Convention is to promote [mediated settlement]" because it is "a faster, less expensive form of dispute resolution" that is "more likely to preserve commercial relationships"); *see also* Jules Coleman & Charles Silver, *Justice in Settlements*, 4 SOC. PHIL. & POL'Y 102, 102–03 (1986) ("Most lawyers, judges, and law professors think it is good that so few cases are tried. . . . [because] settlements conserve resources and enable parties to resolve their differences amicably."). *But see* Owen M. Fisk, *Against Settlement*, 93 YALE L.J. 1073, 1075 (1984) (arguing that settlement is "a highly problematic technique for streamlining dockets"); Ezra Friedman & Abraham L. Wickelgreen, *No Free Lunch: How Settlement Can Reduce the Legal System's Ability to Induce Efficient Behavior*, 61 S.M.U. L. REV. 1355, 1356 (2008) ("[T]o make an appropriate judgment as to the wisdom of promoting settlement, one must not simply look at how settlement reduces legal costs and delay, but also examine how it affects the legal system's ability to regulate behavior.").

[111] *See* W. Whitaker Rayner, Note, *Judicial Authority in the Settlement of Federal Civil Cases*, 42 WASH. & LEE L. REV. 171, 172 (1985); *see also* Yun-chien Chang & William H.J. Hubbard, *Speedy Adjudication in Hard Cases and Low Settlement Rates in Easy Cases: An Empirical Analysis of Taiwanese Courts with Comparison to US Federal Courts*, *in* SELECTION AND DECISION IN JUDICIAL PROCESS AROUND THE WORLD: EMPIRICAL INQUIRIES 77 (Yun-chien Chang ed., 2020) ("To many American lawyers and judges, efficiency means more settlements and case dispositions (such as summary judgment) that avoid the tremendous expense of trial."). For an argument that the Federal Rules of Civil Procedure may distort the relationship between case merits and settlement, see J. Maria Glover, *The Federal Rules of Civil Settlement*, 87 N.Y.U. L. REV. 1713, 1716 (2012). And see Brooke D. Coleman, *The Efficiency Norm*, 56 B.C. L. REV. 1777, 1821–23 (2015), which suggests that the civil litigation system has focused on reducing costs at the expense of true efficiency. As a result, Professor Coleman argues, public adjudication has decreased, resulting in the de-democratization of law and unequal access to justice. *Id.*

proceedings should aim to rule out alternative explanations and determine whether the settlement effect holds across a larger sample.

After Section III.A discusses how I compiled my sample, Section III.B explains how the unavailability of some cases with international parallel proceedings could have skewed the results. Section III.C provides my definition of "settlement" and my process for coding cases as settled. And Section III.D describes how I coded independent variables.

D. Sample

I created an original sample of publicly available cases where federal district courts issued decisions on foreign antisuit injunction motions.[112] A search for "anti-suit or antisuit & injunction" yielded 462 district court decisions from January 1, 2000 through December 31, 2020 on Westlaw,[113] and 461 from the same time period on Lexis. Using the same search criteria, Westlaw's "WestSearch" tool produced 104 results—some of which overlapped with results from its default search function.[114] By searching for "international or foreign" within all Westlaw and Lexis results, I narrowed the list to 375 opinions on Westlaw, ninety-two on WestSearch, and 377 on Lexis. Of these, 128 cases were usable datapoints—decisions by federal district courts on foreign antisuit injunction motions.[115] Most of the unusable

[112] By using two legal databases, Westlaw and Lexis, I sought to mitigate the potential for one database's unique algorithm to bias the sample. *See* Susan Nevelow Mart, *The Algorithm as a Human Artifact: Implications for Legal [Re]Search*, 109 LAW LIBR. J. 387, 420 (2017) ("[E]very algorithm starts with a different set of biases and assumptions."); Susan Nevelow Mart, *Results May Vary: Which Database a Researcher Uses Makes a Difference*, 104 A.B.A. J. 48, 52–53 (2018) (studying differences between databases and stating, "[a]s a matter of empirical fact, . . . that Westlaw and Lexis Advance return more relevant and unique results"). *But see* Brian N. Lizotte, *Publish or Perish: The Electronic Availability of Summary Judgments by Eight District Courts*, 2007 WIS. L. REV. 107, 134 (finding that "Lexis and Westlaw were highly consistent in the cases they reported").

[113] All searches were performed or replicated on September 17, 2021, or November 19, 2021. Since Westlaw and Lexis update their databases, readers who repeat the searches may get different results. Records of search results are on file with the *Northwestern University Law Review*.

[114] The WestSearch feature "includes documents with concepts related to [search] terms for more thorough research." *See WestSearch: The World's Most Advanced Legal Search Engine*, WESTLAW, https://web.archive.org/web/20210903063110/http://info.legalsolutions.thomsonreuters.com/pdf/wln2/l-355700_v2.pdf [https://perma.cc/95LS-6JPP] (explaining WestSearch).

[115] *See infra* Table A1 (detailing the 128 cases selected). This study's sample is larger than the two existing empirical projects involving foreign antisuit injunctions. *See* Laura Eddleman Heim, *Protecting Their Own?: Pro-American Bias and the Issuance of Anti-Suit Injunctions*, 69 OHIO STATE L.J. 701, 719–20, 733–34 (2008) (analyzing thirty antisuit injunction decisions between 1999 and 2008); Margarita Treviño de Coale, *Stay, Dismiss, Enjoin, or Abstain?: A Survey*, 17 B.U. INT'L L.J. 79, 94–96, 112 (1999) (surveying eighty-two cases involving international parallel proceedings from 1980 to 1999). I excluded bankruptcy court decisions, which rely on a different body of law. *See* Heim, *supra* note 115, at 710 n.48.

opinions involve domestic parallel proceedings or discuss earlier foreign antisuit injunction decisions. Some cases were open or pending appeal.[116]

To check that my search terms did not miss relevant results, I ran additional searches on each database for "anti-suit or antisuit & enjoin! % injunctions," finding no new usable cases. I also filtered a search for "anti-suit or antisuit & injunction or enjoin!" by results including terms associated with names of countries that are the most common forums for litigation—such as "England or English or Britain or British % international or foreign"—without finding any new usable cases.[117]

E. Unavailable Opinions and Selection Bias

Every case I coded has produced at least one opinion that is either published in the *Federal Supplement* or unpublished and available on Westlaw or Lexis. While all published opinions are on Westlaw and Lexis, most opinions courts issue are unavailable.[118] This study's sample included thirty-one published opinions and ninety-seven unpublished opinions. I relied on both types of opinion in calculating the relationship between foreign antisuit injunction decision and settlement.[119] I also conducted robustness checks within the groups.[120]

According to previous research, there are significant differences between published, unpublished, and unavailable opinions.[121] For example, published opinions generally discuss more novel, complex, and important

---

[116] *See, e.g.*, MWK Recruiting, Inc. v. Jowers, No. 18-cv-00444, 2019 WL 5927288 (W.D. Tex. Nov. 12, 2019); MWK Recruiting, Inc. v. Jowers, No. 18-cv-00444 (W.D. Tex. filed May 25, 2018) (open); Hart Dairy Creamery Corp. v. Kea Invs. Ltd., No. 20-cv-20452, 2020 WL 6363904 (S.D. Fla. Oct. 29, 2020); Notice of Appeal, Hart Dairy Creamery Corp. v. Kea Invs. Ltd., No. 20-cv-20452 (S.D. Fla. Nov. 25, 2020); Hart Dairy Creamer Corp. v. Kea Invs. Ltd., No. 20-cv-14451 (S.D. Fla. filed Nov. 25, 2020) (pending appeal).

[117] I ran additional searches for Japan, Wales, Canada, Australia, and France—countries with the highest numbers of civil suits filed. *See* J. Mark Ramseyer & Eric B. Rasmusen, *Comparative Litigation Rates* 7–10 (Harv. John M. Olin Ctr. for L., Econ., & Bus., Discussion Paper No. 681, 2010), http://www.law.harvard.edu/programs/olin_center/papers/pdf/Ramseyer_681.pdf [https://perma.cc/6KNF-BFEU].

[118] Kevin M. Clermont & Theodore Eisenberg, *Litigation Realities*, 88 CORNELL L. REV. 119, 125 (2002) ("[J]udicial decisions represent only the very tip of the mass of grievances."); Lizotte, *supra* note 112, at 146 (finding that federal reporters contain as few as 12% of summary judgment dispositions, while Lexis and Westlaw, together, make 41% of dispositions available).

[119] *Cf.* Peter Siegelman & John J. Donohue III, *Studying the Iceberg from Its Tip: A Comparison of Published and Unpublished Employment Discrimination Cases*, 24 LAW & SOC'Y REV. 1133, 1138–39 (1990) (including in their study both published and unpublished decisions as I define them here); Christopher A. Whytock, *Myth or Mess? International Choice of Law in Action*, 84 N.Y.U. L. REV. 719, 743 n.120 (2009) (same).

[120] See *infra* Section IV.E for findings.

[121] I use "published" to mean opinions in the *Federal Supplement* and "unpublished" for opinions publicly available on Westlaw or Lexis but not in any case law reporter. To refer to opinions that are not in any case law reporter or on Westlaw or Lexis, I use "unavailable."

issues than unpublished opinions,[122] and unpublished opinions may be less mundane than unavailable opinions.[123] Further, publishing norms vary by circuit and district.[124] If the process through which opinions become published or available correlates with case outcomes or litigants' choices, I cannot draw valid inferences about the law from the observable opinions.[125]

By extension, conclusions about litigant behavior within observable cases might not translate into conclusions about litigant behavior in general. Since the strength of a case on the merits can influence settlement rates,[126] the difficulty of a court's decision whether to enjoin foreign litigation could affect settlement too. And if available cases present tougher decisions than unavailable cases, available foreign antisuit injunction decisions may cause a greater shift in certainty for litigants than unavailable decisions.

The relationship between settlement and certainty—such as certainty about whether parallel litigation will stop or continue—is the subject of speculative debate.[127] Gaining information upon the resolution of a foreign

---

[122] *See* Lizotte, *supra* note 112, at 146; *see* Edward K. Cheng, *Detection and Correction of Case-Publication Bias*, 47 J. LEGAL STUD. 151, 151 (2018) ("The observable case law in databases like Westlaw and LexisNexis is not a representative sample of the universe of legal decisions."); Siegelman & Donohue, *supra* note 119, at 1150 (stating that "cases with published decisions tend to be more complex" than unpublished cases).

[123] *See, e.g.*, *Submission Guidelines for Court Opinions: Submit Judicial Opinions to Thomson Reuters for Publication*, WESTLAW, https://legal.thomsonreuters.com/en/solutions/government/court-opinion-submission-guidelines [https://perma.cc/58NE-QJXJ] (urging judges to submit opinions for reporting that are "of general interest and importance to the bench and bar," then encouraging judges to "exercise liberal discretion in submitting opinions for online-only reporting"); Joseph L. Gerken, *A Librarian's Guide to Unpublished Judicial Opinions*, 96 LAW LIBR. J. 475, 479 (2004); *see also* Christina L. Boyd, Pauline T. Kim & Margo Schlanger, *Mapping the Iceberg: The Impact of Data Sources on the Study of District Courts*, 17 J. EMPIRICAL LEGAL STUD. 466, 468 (2020) (listing factors influencing the availability of an unpublished opinion on Westlaw or Lexis, including whether the judge has justified the decision in writing and whether it is an opinion or an order).

[124] Gbemende E. Johnson, *Adjudicating Executive Privilege: Federal Administrative Agencies and Deliberative Process Privilege Claims in U.S. District Courts*, 53 LAW & SOC'Y REV. 823, 838 (2019) ("Circuits develop varying norms and procedures for opinion publishing, and individual, institutional, and political factors influence whether district judges formally publish their decisions."); Lizotte, *supra* note 112, at 146 (noting the "drastic variation" among districts' publishing procedures); Siegelman & Donohue, *supra* note 119, at 1144 (finding substantial differences in the publication rates of judicial districts).

[125] Cheng, *supra* note 122, at 152, 156. For examples of studies measuring case-publication bias, see Siegelman & Donohue, *supra* note 119, at 1145, and Lizotte, *supra* note 112, at 109.

[126] *See* Benjamin Sunshine & Víctor Abel Pereyra, *Access-to-Justice v. Efficiency: An Empirical Study of Settlement Rates After* Twombly & Iqbal, 2015 U. ILL. L. REV. 357, 388 (2015) ("Meritorious cases settle at a higher rate than nonmeritorious cases."); Eisenberg & Lanvers, *supra* note 18, at 125 ("Strong filed cases tend to settle; weak ones do not.").

[127] *Compare* Edward Brunet, *The Efficiency of Summary Judgment*, 43 LOYOLA U. L. REV. 689, 697 (2012) (suggesting that "uncertainty deters settlement"), *with* D. Theodore Rave, *Questioning the Efficiency of Summary Judgment*, 81 N.Y.U. L. REV. 875, 892–93 (2006) (suggesting that parties may

antisuit injunction decision could encourage some parties to settle, which I refer to as the information impact.[128] Yet others might be reluctant to settle after investing significant resources into arguing foreign antisuit injunction motions—either because of the importance of the issues at stake or because the expended litigation costs are recyclable, making subsequent stages of litigation less expensive.[129] While foreign antisuit injunction motions can be expensive,[130] their resolution does not reflect cases' underlying merits. So, if the costs of arguing antisuit injunction motions are not recyclable, the information impact of their decisions may push toward settlement with greater force than cost-recycling incentives.[131] And the information impact may vary between published, unpublished, and unavailable antisuit injunction decisions.

In short, this Note's results might not reflect the universe of unavailable opinions and unobserved litigants.[132] Published and unpublished cases might tend to be more complex and difficult than unavailable cases, potentially requiring more resources of courts and litigants.[133] And the outcomes may differ. For litigants, the resources invested and the certainty that courts' decisions provide might influence settlement—potentially distorting the relationship between antisuit injunction decisions and settlement.

To avoid this potential selection bias, future studies might look beyond the visible tip of cases available on Westlaw and Lexis—perhaps to PACER—to the iceberg of international parallel-proceedings cases to randomly sample and code.[134] Doing so was impracticable here, and this Note

avoid settlement after sinking litigation costs into arguing a significant motion if subsequent litigation will be less expensive as a result).

[128] *Cf.* Brunet, *supra* note 127, at 697 (arguing that certainty after summary judgment induces settlement).

[129] *Cf.* Rave, *supra* note 127, at 892–95 (discussing this potential effect in the summary judgment context).

[130] As an extreme example, Canon Latin America paid $2.9 million in attorneys' fees—the subject of a later malpractice suit—in its fight to enjoin parallel litigation in Costa Rica. *See* Nathan Hale, *Canon Unit Hits Miami Law Firm with $3M Malpractice Suit*, LAW360 (Sept. 27, 2013, 9:10 PM), https://www.law360.com/articles/476529/canon-unit-hits-miami-law-firm-with-3m-malpractice-suit [https://perma.cc/CUM5-P394]; Canon Latin Am. Inc. v. Lantech, 497 F. Supp. 2d 1370, 1373–75 (2007).

[131] I am not aware of empirical research showing how these competing pressures for and against settlement play out across cases. And I did not attempt to measure how difficult, important, or uncertain cases were.

[132] Samuel P. Baumgartner & Christopher A. Whytock, *Enforcement of Foreign Judgments, Systemic Calibration, and the Global Law Market*, 23 THEORETICAL INQUIRIES L. 119, 132 (2022).

[133] *See infra* notes 139–140 and accompanying text.

[134] *See* David Freeman Engstrom, *The* Twiqbal *Puzzle and Empirical Study of Civil Procedure*, 65 STAN. L. REV. 1203, 1208–09 (2015) (explaining the possibility of using PACER websites to create a random sample). *But see* Cheng, *supra* note 122, at 157 (noting that PACER, like Westlaw, is imperfect);

aims to draw empirical attention to international parallel proceedings and settlement rather than prove a causal relationship.

Although a sample including unavailable opinions would be ideal, studying available opinions alone is worthwhile because available opinions influence actors beyond the parties to the case.[135] Unavailable opinions do not.[136] When rational actors face international parallel proceedings, they consult the internet of available case law before deciding whether to move for an antisuit injunction, litigate in multiple forums, or settle.[137] So while outcomes and influence on party behavior, including settlements, may differ between published, unpublished, and unavailable cases, available cases have special relevance.[138]

Further, outcomes in unavailable cases may vary from unpublished cases in the same way that unpublished cases differ from published cases.[139] For example, if unpublished cases tend to be less complex than published cases, unavailable cases might present even more straightforward issues.[140] At least, the bias is unlikely to move in the opposite direction. Next, I explain how I coded the cases.

Baumgartner & Whytock, *supra* note 132, at 132 n.52 (explaining that PACER lacks full-text search capacity). For scholarship discussing issues with using Westlaw or Lexis for empirical research, see Merritt E. McAlister, *Missing Decisions*, 169 U. PA. L. REV. 1101, 1104–05 (2021); Boyd et al., *supra* note 123, at 467–69 (2020); Elizabeth Y. McCuskey, *Submerged Precedent*, 16 NEV. L.J. 515, 516 (2016); Peter W. Martin, *District Court Opinions that Remain Hidden Despite a Long-Standing Congressional Mandate of Transparency—the Result of Judicial Autonomy and Systemic Indifference*, 110 LAW LIBR. J. 305, 313 (2018); Engstrom, *supra*, at 1214–15; and David A. Hoffman, Alan J. Izenman & Jeffrey R. Lidicker, *Docketology, District Courts, and Doctrine*, 85 WASH. U. L. REV. 681, 686-88 (2007). For examples of empirical projects relying on Westlaw or Lexis, see Samuel Issacharoff & Florencia Marotta-Wurgler, *The Hollowed Out Common Law*, 67 UCLA L. REV. 600, 607 (2020); Johnson, *supra* note 124, at 834; Aaron-Andrew P. Bruhl, *Statutory Interpretation and the Rest of the Iceberg: Divergences Between the Lower Federal Courts and the Supreme Court*, 68 DUKE L.J. 1, 30 (2018); Neal Devins & David Klein, *The Vanishing Common Law Judge?*, 165 U. PA. L. REV. 595, 607 (2017); Sunshine & Pereyra, *supra* note 126, at 383; Whytock, *supra* note 119, at 754; and see also Lee Epstein & Gary King, *The Rules of Inference*, 69 U. CHI. L. REV. 1, 110 (2002), which describes how random sampling may prevent or reduce selection bias.

[135] Baumgartner & Whytock, *supra* note 132, at 133. Professor Whytock calls this influence the "transnational shadow of the law." Christopher A. Whytock, *Domestic Courts and Global Governance*, 84 TUL. L. REV. 67, 72 (2009).

[136] *See* McCuskey, *supra* note 134, at 516–17.

[137] *See* Baumgartner & Whytock, *supra* note 132, at 133.

[138] *See id.*

[139] *See id.* at 132–33, 133 n.56, 154, 155 fig.C-1 (finding that unpublished opinions more frequently recognize and enforce foreign judgments than published opinions and inferring that unavailable opinions may have a higher rate of recognition and enforcement); Johnson, *supra* note 124, at 838–39 (studying cases from Lexis and controlling for whether opinions are published); Siegelman & Donohue, *supra* note 119, at 1137 (explaining that differences between published and unpublished cases can inform interpretation of results to overcome selection bias); *see also infra* Section IV.E (comparing published and unpublished opinions).

[140] *See* Baumgartner & Whytock, *supra* note 132, at 132, 154.

F. Defining and Coding Settlement

The definition of settlement is crucial to any study comparing settlement rates.[141] Since this Note focuses on how financial pressure relates to case outcomes, I define settlement to include disputes resolved through private agreement, mediation,[142] dismissal for want of prosecution,[143] stipulated voluntary dismissal,[144] or default judgment.[145] I include the latter three outcomes among settlements because the additional expense of international parallel proceedings could contribute to plaintiffs' or defendants' decisions to stop litigating. By contrast, it is less likely that financial pressure on litigants influences judges' decisions to dismiss cases on the merits or for jurisdictional or procedural reasons.[146] So the study did not treat those types of cases as settlements.

As Professor Theodore Eisenberg and Charlotte Lanvers have observed, whether dismissals in favor of parallel litigation or arbitration are settlements is unclear.[147] I followed their lead in underincluding cases that could have settled after dismissal from the district court if I could not find

---

[141] *See* Eisenberg & Lanvers, *supra* note 18, at 115 (citing Kevin M. Clermont, *Litigation Realities Redux*, 84 NOTRE DAME L. REV. 1919, 1955 n.180 (2009)).

[142] For most of the cases in this study, no publicly available information indicated whether parties settled privately or with help from a mediator.

[143] There were no cases in this sample ending in dismissal for want of prosecution—that is, because the parties became inactive for a certain amount of time—but I suggest that future studies aiming to build on these results include such cases as settlements.

[144] I did not count a disputed voluntary dismissal as a settlement. In one case, the plaintiff sought voluntary dismissal of its claims and the defendants' counterclaims without prejudice and the dissolution of the court's foreign antisuit injunction to allow the plaintiff to litigate in Egypt. Joint Status Report at 3, Tahaya Misr Inv. Inc. v. Helwan Cement S.A.E., No. 16-cv-01001 (C.D. Cal. Oct. 24, 2016). The defendants sought dismissal of the plaintiff's claims with prejudice and summary judgment on their counterclaims. *Id.* at 3–4. The court granted the plaintiff's motion for voluntary dismissal without prejudice and awarded the defendants attorneys' fees. Final Judgment of Dismissal & Award of Attorneys' Fees at 8, Tahaya Misr Inv. Inc. v. Helwan Cement S.A.E., No. 16-cv-01001 (C.D. Cal. Mar. 17, 2017). Despite the apparent awkwardness of carving this disputed voluntary dismissal out from the stipulated voluntary dismissals, *Tahaya*'s adversarial resolution would be more awkward to shoehorn into the settlement category.

[145] *See* Eisenberg & Lanvers, *supra* note 18, at 116 (explaining that defining "settlement" to include default judgments and dismissals for lack of prosecution is appropriate to contrast "settled" cases with those resolved on the merits after contested proceedings but inappropriate to measure party success). As with disputed voluntary dismissals, I did not code the two cases ending in disputed default judgments as settled. *See* Sindhi v. Raina, No. 15-cv-03229, 2017 WL 4167511, at *1 (N.D. Tex. Sept. 20, 2017) (denying motion to overturn default judgment); CFTC v. Lake Shore Asset Mgmt. Ltd., No. 07-cv-03598, 2008 WL 2945453, at *1 (N.D. Ill. June 10, 2008) (granting default judgment because of defendant's "willful misconduct" including defying discovery orders and hiding documents).

[146] *See* Chang & Hubbard *supra* note 111, at 79 (distinguishing "settlements, withdrawals, and successful mediations" from "judgment[s] in which the court renders a verdict that declares a winner and awards (or declines to award) damages or issues an injunction").

[147] Eisenberg & Lanvers, *supra* note 18, at 117–18.

any evidence of subsequent settlement.[148] Because this approach might skew settlement rates lower, I also conducted alternative calculations to see if my results hold after excluding ambiguous cases or counting them as settled.

For example, cases which ended in judgment compelling arbitration could have settled before the arbitrator issued an award.[149] The sample included twelve cases for which this was possible. But even if all those cases settled out of arbitration, the results hold.[150] More likely, fewer settled.

Then, it is more difficult to guess how many cases could have settled after a final judgment on the merits by the U.S. court but before a judgment in a foreign tribunal.[151] Yet this possibility only concerns the cases where courts refused to enjoin foreign parallel proceedings. If the settlement rate is higher among most of those cases, the observed rise in settlement after foreign antisuit injunction denials would become more extreme.[152]

The exception to that rule is for the nine cases I coded as antisuit injunction grants because the courts practically ended the parallel nature of the litigation, consolidating the proceedings in the foreign forum.[153] But the results are robust to dropping these cases or imagining that all of them settled,[154] which is unlikely considering some foreign courts give preclusive effect to U.S. courts' judgments.[155] In fact, the results hold after excluding the seventeen cases that could have settled before an arbitration award or a foreign tribunal's judgment.[156] Even if all seventeen of these cases settled (100.0%)—an improbably high figure—the observed rise in settlement after foreign antisuit injunction denial remains statistically significant.[157]

---

[148] *See id.*

[149] *See* Jill I. Gross, *Bargaining in the (Murky) Shadow of Arbitration*, 24 HARV. NEGOT. L. REV. 185, 198 (2019) ("[S]ettlement rates for cases filed in arbitration are reasonably similar to those for litigation.").

[150] *See infra* Section IV.A.

[151] Some parallel foreign tribunals would give final judgments of U.S. courts preclusive effect, presumably lowering the odds of post-U.S.-judgment settlement. *See* Baumgartner, *Understanding the Obstacles*, *supra* note 41, at 967. For a comparison of settlement rates across countries, see Chang & Klerman, *supra* note 104, at 5–12. Estimating the likelihood of settlement after U.S. courts' final judgments and before foreign tribunals' judgments is beyond the scope of this empirical project.

[152] *See infra* Section IV.A (finding the settlement rate more than doubled after courts denied foreign antisuit injunctions).

[153] *See infra* Section IV.A.

[154] *Infra* notes 174–175 and accompanying text.

[155] *See* Baumgartner, *Understanding the Obstacles*, *supra* note 41, at 967. Considering the results of Professors Chang and Klerman's global comparison of settlement rates suggests that a settlement rate of 100% among these cases would be anomalous. *See* Chang & Klerman, *supra* note 104, at 8 fig.2, 10 fig.3.

[156] *Infra* Section IV.A. There were four cases that ended in judgment compelling arbitration and simultaneous denial of a foreign antisuit injunction, which I coded as antisuit injunction grants.

[157] *Infra* notes 178–180 and accompanying text.

To determine whether the parties settled after the court issued a foreign antisuit injunction decision, I looked at the case's court docket on Bloomberg Law.[158] Where the docket did not indicate whether the parties settled, I used Google to search for news articles reporting settlement.[159] As noted above, alternative calculations helped ensure that missing information did not significantly skew my results. For each settlement rate, I calculated a 95% confidence interval, estimating the range of likely values to a 95% certainty—a standard percentage for confidence intervals.[160] I used a two-sample z-test of proportions to calculate the significance of differences in settlement rates.[161]

G. Coding Independent Variables

For each case, I recorded the district court's foreign antisuit injunction decision, the ultimate disposition, the type of case, decisions on motions to dismiss or for summary judgment, the subsequent appellate history, the legal standard (restrictive or permissive),[162] the foreign forum, the forum in which the case was first filed, the cause of action, the amount in controversy, the basis of jurisdiction, the citizenship of the parties, whether the parallel litigation was reactive or repetitive,[163] and whether the case produced published or unpublished opinions. I found this information on Bloomberg Law's database of court dockets. Because this study aims to measure the effect of ongoing international parallel proceedings on settlement, I counted

---

[158] *See, e.g.*, Joint Stipulation & Order for Dismissal with Prejudice at 2, Huawei Techs. Co. v. Samsung Elecs. Co., No. 16-cv-02787 (N.D. Cal. Mar. 25, 2019) (indicating dismissal pursuant to settlement agreement).

[159] *See, e.g.*, Astrid Jatzkowski, *Patent-Vergleich: Qiagen Vertraut Vossius und Hogan Lovells bei Einigung mit Abbott*, JUVE (Oct. 14, 2010), https://www.juve.de/nachrichten/verfahren/2010/10/patent-vergleich-qiagen-vertraut-vossius-und-hogan-lovells-bei-einigung-mit-abbott [https://perma.cc/J9KF-NR82] (reporting that the parties settled in Germany); *see also* Abbott Lab'ys v. Qiagen Gaithersburg, Inc., No. 10-cv-00712, 2010 WL 1539952, at *1, *5 (N.D. Ill. Apr. 15, 2010) (denying motion for antisuit injunction and compelling arbitration).

[160] A confidence interval measures the certainty of a result by estimating a range of values that is likely to contain the true value. *See Confidence Intervals*, YALE UNIV. DEP'T OF STAT., http://www.stat.yale.edu/Courses/1997-98/101/confint.htm [https://perma.cc/5P3S-7PWJ]. Most studies use a 95% confidence level. *See, e.g.*, Eisenberg & Lanvers, *supra* note 18, at 120 (conducting an empirical study of settlement rates and using a 95% confidence level).

[161] A two-sample z-test of proportions estimates the likelihood that two population proportions are significantly different—such as the proportion of cases that settle after a court grants an antisuit injunction and the proportion of cases that settle after an antisuit injunction denial. Zach, *Two Proportion Z-Test: Definition, Formula, and Example*, STATOLOGY (Apr. 24, 2020), https://www.statology.org/two-proportion-z-test [https://perma.cc/8L7Q-CBZT]. The test's results may allow rejection of the null hypothesis that the two proportions are equal. *Id.*

[162] I coded the First, Second, Third, Sixth, Eighth, Eleventh, and D.C. Circuits as restrictive; the Fifth, Seventh, and Ninth Circuits as permissive; and the Fourth Circuit as undecided. *See supra* Part II.

[163] *Supra* notes 45–50 and accompanying text (explaining repetitive and reactive litigation).

cases in which a federal circuit court vacated a district court's order granting a foreign antisuit injunction motion among those cases in which a district court denied relief. And I included the one case in which a federal circuit court reversed a district court's denial of a foreign antisuit injunction motion with the cases in which courts granted foreign antisuit injunction motions.[164]

Similarly, when the district court denied a foreign antisuit injunction motion but simultaneously stayed, dismissed, or otherwise ended the domestic proceedings in favor of foreign proceedings—thereby consolidating the proceedings in the foreign forum—I coded the case as if the court had granted relief.[165] Again, removing these nine cases, or imagining that all of them settled, does not significantly change the results.[166]

Of course, staying, dismissing, or resolving domestic litigation could affect parties' strategic positions differently than enjoining foreign litigation. Depending on whether a foreign forum recognizes and enforces U.S. judgments, for instance, a U.S. court's decision to grant summary judgment or merits-based dismissal could impact litigants' chances of success in the foreign forum; litigants' probability of success, in turn, could affect the likelihood of settlement.[167] Further, the parallel forums might apply different substantive law, which could change the likely outcome on the merits. And the costs of litigating exclusively in the foreign forum are likely to be lower than the costs of litigating exclusively in the United States.[168] While I drew a line between decisions allowing parallel proceedings to continue and decisions ending parallel proceedings, future studies may benefit from measuring settlement rates within additional subcategories of case outcomes.

---

[164] *See* E. & J. Gallo Winery v. Andina Licores S.A., No. 05-cv-00101, 2005 WL 1554001, at *13 (E.D. Cal. June 24, 2005), *rev'd*, 446 F.3d 984, 986–87 (9th Cir. 2006); Order of Final Judgment at 7–8, E. & J. Gallo Winery v. Andina Licores S.A., No. 05-cv-00101 (E.D. Cal. Jan. 31, 2007) (permanently enjoining the defendant from litigating a parallel case in Ecuador).

[165] *See, e.g.*, MacDermid Offshore Sols., LLC v. Niche Prods., LLC, No. 12-cv-02483, 2013 WL 3980870, at *1 (S.D. Tex. Aug. 2, 2013) (denying motion for foreign antisuit injunction but granting motion for stay in favor of foreign parallel proceedings); Aruba Hotel Enters. N.V. v. Belfonti, 611 F. Supp. 2d 203, 215 (D. Conn. 2009) (denying motion for foreign antisuit injunction but granting cross-motions for summary judgment); Dow Jones & Co. v. Harrods, Ltd., 237 F. Supp. 2d 394, 425, 447 (S.D.N.Y. 2002) (denying motion for foreign antisuit injunction but granting motion to dismiss in favor of foreign proceedings); Fellowes, Inc. v. Changzhou Xinrui Fellowes Off. Equip. Co., 759 F.3d 787, 790 (7th Cir. 2014) (vacating the district court's order granting a foreign antisuit injunction motion and remanding with orders to dismiss for lack of subject matter jurisdiction). *But see* Skidmore Energy, Inc. v. KPMG, No. 03-cv-02138, 2004 WL 2804888, at *8–9 (N.D. Tex. Dec. 3, 2004) (denying motion for antisuit injunction and granting motion to dismiss as to some but not all defendants).

[166] *See infra* Section IV.A.

[167] *See* Eisenberg & Lanvers, *supra* note 18, at 124–25 ("Strong filed cases tend to settle; weak ones do not."); Baumgartner, *Understanding the Obstacles*, *supra* note 41, at 967.

[168] *See* U.S. CHAMBER INST. FOR LEGAL REFORM, *supra* note 106, at 1–3, 6; LAWS. FOR CIV. JUST. ET AL., *supra* note 106, at 3.

* * *

This Part has discussed how I compiled and analyzed an original sample of 128 cases from Westlaw and Lexis in which federal district courts decided foreign antisuit injunction motions. In short, I compared the settlement rate for cases where foreign parallel proceedings ended with that of cases where courts allowed parallel litigation to continue. There are unavoidable limitations of studying only published or electronically available cases. And the universe of case outcomes and the factors that influence settlement do not translate easily into codable variables. Yet, I have attempted to grapple with these issues and chart a path for future studies. I turn next to the results.

IV. RESULTS

When courts deny foreign antisuit injunction motions, the settlement rate rises. The headline results appear in Table 1 in Section IV.A, showing that settlement occurred more than twice as often after antisuit injunction denials compared with antisuit injunction grants. The remainder of this Part measures and discusses other variables that could have potentially skewed the findings. Overall, the rise in settlement persisted across the variables observed. This study's early evidence of the settlement effect suggests a correlation between foreign antisuit injunction denial and settlement, which does not imply a causal relationship. Further studies of international parallel proceedings should consider questions of causation.

A. Foreign Antisuit Injunction Motion Decisions and Settlement

When courts permitted foreign parallel proceedings to continue over an antisuit injunction motion, the settlement rate more than doubled. Of the seventy cases in which courts granted foreign antisuit injunction motions or otherwise ended parallel proceedings,[169] twenty-five cases settled (35.7%).[170] By contrast, forty-five out of fifty-eight cases settled after a denial (77.6%).[171] The discrepancy is statistically significant with a 95% level of

[169] *See supra* Section III.C (explaining why the study counted cases in which courts denied foreign antisuit injunction motions but otherwise ended parallel litigation as if the courts had granted the motions).

[170] *Infra* Table 1.

[171] *Infra* Table 1.

confidence,[172] and the confidence intervals for the settlement rates do not overlap.[173]

FIGURE 1: FOREIGN ANTISUIT INJUNCTION (ASI) DECISION AND SETTLEMENT RATE

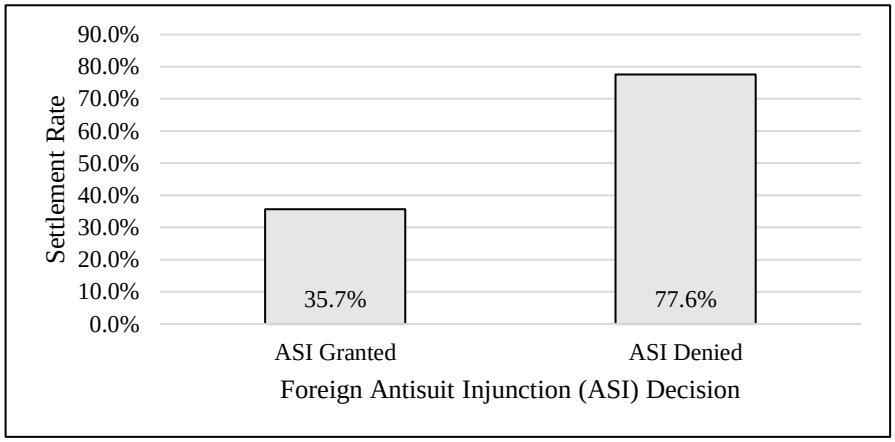

TABLE 1: FOREIGN ANTISUIT INJUNCTION (ASI) DECISION AND SETTLEMENT RATE

Foreign ASI Decision	Settled	Cases	95% CI (Confidence Interval)
ASI Granted	35.7%	25/70	24.5–46.9
ASI Denied	77.6%	45/58	66.9–88.3

[172] The *p*-value is < 0.001. A *p*-value is the likelihood that the data observed could have been distributed as it is by random chance, rather than because of an effect being measured. Ronald L. Wasserstein & Nicole A. Lazar, *The ASA Statement on* P-*Values: Context, Process, and Purpose*, 70 AM. STATISTICIAN 129, 131 (2016), https://amstat.tandfonline.com/doi/pdf/10.1080/00031305.2016.1154108?needAccess=true [https://perma.cc/7EEX-RAUL]. A smaller *p*-value suggests that the effect being tested is real. *See id.* Here, the null hypothesis is that courts' decisions on foreign antisuit injunction motions have no relationship with the probability of settlement, and the low *p*-value may indicate that this null hypothesis is incompatible with the results appearing in Table 1. For this study, I consider a *p*-value below 0.05—corresponding with a less than 5% chance that the results are consistent with the null hypothesis being true—to be statistically significant, a decision in line with general statistical practices. *Id.*; *cf.* Brian Resnick, *800 Scientists Say It's Time to Abandon "Statistical Significance,"* VOX (May 22, 2019, 12:00 PM), https://www.vox.com/latest-news/2019/3/22/18275913/statistical-significance-p-values-explained [https://perma.cc/9ATS-AT4X] (stressing the importance of properly interpreting *p*-values and other measures of statistical significance). Recall that I calculated *p*-values using a two-sample z-test of proportions. *See supra* note 161 and accompanying text.

[173] *See infra* Table 1; *see also* Andrea Knezevic, *Overlapping Confidence Intervals and Statistical Significance*, CORNELL STAT. CONSULTING UNIT (2020), https://cscu.cornell.edu/wp-content/uploads/73_ci.pdf [https://perma.cc/J8EW-F9FM] (explaining that "[i]f two statistics have non-overlapping confidence intervals, they are necessarily significantly different but if they have overlapping confidence intervals, it is not necessarily true that they are not significantly different").

Further, these results hold after dropping the nine cases where courts denied antisuit injunction motions but otherwise consolidated the parallel proceedings—through stays, dismissals, or judgments—cases I coded as antisuit injunction grants.[174] Even assuming all those cases settled before the foreign tribunal, the significant rise in settlement after antisuit injunction denials persists.[175] Likewise, for the twelve cases that ended in judgment compelling arbitration and could have settled before a final award, the settlement effect holds after dropping or recoding them as settlements.[176] There remains a statistically significant rise in settlement after antisuit injunction denial even dropping all seventeen cases that could have settled before a foreign tribunal or before an arbitration award.[177] Now imagine that instead, all seventeen of these cases had settled: the rise in settlement after antisuit injunction denial would remain significant.[178] Of course, because arbitrations settle at a rate similar to court cases[179] and U.S. courts' judgments may bind litigants in later foreign proceedings,[180] a settlement rate of 100.0% among these cases would be an anomaly.

But correlation between foreign antisuit injunction decision and settlement—no matter how significant—does not demonstrate causation. Thus, while this study reveals a significantly higher settlement rate after foreign antisuit injunction denials, the results are strongest in signifying that

---

[174] Considering only the true antisuit injunction grants, twenty-five of sixty-one cases settled (41.0%) (95% CI = 28.6–53.3). Compared with the antisuit injunction denials (77.6%) (95% CI = 66.9–88.3), the *p*-value is < 0.001, and here too the confidence intervals do not overlap. *See supra* Section III.C.

[175] If all these cases settled, that would make thirty-four out of seventy (48.6%) (95% CI = 36.9–60.3). Compared with antisuit injunction denials (77.6%) (95% CI = 66.9–88.3), the confidence intervals do not overlap, and the *p*-value is 0.001.

[176] Dropping the twelve cases that could have settled after a court compelled arbitration but before the arbitrator issued an award, twenty-five out of fifty-eight settled (43.1%) (95% CI = 30.4–55.8). Compared with the antisuit injunction denials (77.6%) (95% CI = 66.9–88.3), the confidence intervals do not overlap, and the *p*-value is < 0.001. Then, if thirty-seven out of seventy cases settled (52.9%) (95% CI = 41.2–64.6), compared with antisuit injunction denials, the *p*-value is 0.004, and the confidence intervals do not overlap. Recall that I coded the four cases that ended in judgment compelling arbitration and simultaneous antisuit injunction denial as antisuit injunction grants. *Supra* note 156.

[177] Considering only cases that had no possibility of settling after foreign antisuit injunction grants and ultimate dispositions in U.S. courts, twenty-five out of fifty-three settled (47.2%) (95% CI = 33.7–60.6). Compared with the antisuit injunction denials (77.6%) (95% CI = 66.9–88.3), the *p*-value is 0.001, and the confidence intervals do not overlap.

[178] If forty-two out of seventy cases settled after an antisuit injunction grant (60.0%) (95% CI = 48.5–71.5), compared with antisuit injunction denials (77.6%), the *p*-value is 0.034.

[179] *See* Gross, *supra* note 149, at 198.

[180] *See* Baumgartner, *Understanding the Obstacles*, *supra* note 41, at 967. If U.S. judgments sometimes have preclusive effect in foreign forums—reducing uncertainty about the outcome of foreign proceedings—settlement rates should tend to be lower.

international parallel proceedings deserve greater empirical attention.[181] Further, other factors might have contributed to the disparate settlement rates. So the rest of this Part will discuss the additional variables I measured—and those I did not measure—that could have skewed the results. Specifically, I explore case type in Section IV.B, amount in controversy in Section IV.C, repetitive and reactive litigation in Section IV.D, published and unpublished opinions in Section IV.E, and dispositive motions in Section IV.F. Then, in Section IV.G, I discuss factors I did not measure and offer recommendations for future studies.

B. Case Type

The first variable I considered that may have affected the results is case type. The relationship between foreign antisuit injunction decision and settlement appears robust to case type,[182] although comparing certain types of cases produced statistically significant differences in settlement. Existing empirical studies have also shown significant settlement differences by case type.[183] Because case types are not mutually exclusive, I coded the case type for cases with claims sounding in more than one category by judging the predominant flavor of the complaint.[184]

Notably, arbitration cases were unique in that they settled at a significantly lower rate than all other case types.[185] Arbitration cases also divided the most unevenly into antisuit injunction grants (25.7% of all antisuit injunction grant cases) and denials (8.6% of all denial cases). So the higher number of arbitration cases among the cases in which courts enjoined foreign litigation could have weighed down the settlement rate.[186] But

[181] For example, larger studies using random sampling and regression analysis could help confirm or deny the observed correlation. *See* Amy Gallo, *A Refresher on Regression Analysis*, HARV. BUS. REV. (Nov. 4, 2015), https://hbr.org/2015/11/a-refresher-on-regression-analysis [https://perma.cc/Q2UZ-SLTH] (explaining how to use regression modeling and analysis to infer relatedness).

[182] The types of cases were contract, arbitration, intellectual property, tort, and other. The arbitration cases involved a variety of underlying subject matter, but the dispute in the district court focused on whether the case should be submitted to arbitration or whether an arbitration award should be enforced.

[183] *See* Eisenberg & Lanvers, *supra* note 18, at 121–25, 133, 135 (discussing earlier studies on settlement and case type and finding that tort cases settle at a significantly higher rate than other case types).

[184] Some cases presented difficult choices. *See, e.g.*, Verified Complaint at 3–6, Maroc Fruit Board S.A. v. M/V Almeda Star, 11-cv-12091 (D. Mass. Nov. 25, 2011) (alleging two contract claims and two tort claims). I put *Maroc* in the "contract" bucket because the dispute arose out of a shipping contract.

[185] Comparing the settlement rate of arbitration cases (13.0%) with that of intellectual property cases (72.7%) and contract cases (61.3%), the *p*-values are < 0.001. Comparing the arbitration settlement rate with the tort settlement rate (71.4%), the *p*-value is 0.002. And comparing arbitration cases with other cases (57.1%), the *p*-value is 0.004.

[186] Zero out of eighteen arbitration cases settled after courts granted foreign antisuit injunction motions.

excluding all arbitration cases from the sample, foreign antisuit injunction denials still correlated with a significantly higher settlement rate.[187]

At the other extreme, intellectual property cases—the case type with the highest settlement rate—made up 12.9% of antisuit injunction grants and 22.4% of denials. Yet, the significant settlement rise after foreign antisuit injunction denial persists after dropping all intellectual property cases.[188] Although I found no statistically significant settlement variance between case types besides arbitration, this study's sample size for most case types does not permit meaningful inferences about the relationship between case type and settlement.

Nonetheless, the foreign antisuit injunction settlement effect holds across most case types. The settlement rate is significantly higher after foreign antisuit injunction denial for contract,[189] intellectual property,[190] and arbitration cases.[191] I found directional support within tort and "other" cases, although there were too few of those cases to find statistical significance.[192]

Table 2 summarizes these findings, showing a strong pattern of a significant rise in settlement after foreign antisuit injunction denial despite changes in case type. Only arbitration cases produced significant differences in settlement compared to other case types, and the antisuit injunction settlement effect persisted after dropping arbitration cases from the sample. So foreign antisuit injunction decisions seem to have a stronger connection to settlement rates than case type.

---

[187] Excluding arbitration cases, forty-two out of fifty-four cases settled after courts denied foreign antisuit injunction motions (77.8%) (95% CI = 66.7–88.9), while twenty-five out of fifty-one cases settled after courts granted relief (49.0%) (95% CI = 35.3–62.7). Comparing these proportions, the confidence intervals do not overlap, and the *p*-value is 0.002.

[188] Removing intellectual property cases, twenty-one out of sixty cases settled after a foreign antisuit injunction grant (35.0%) (95% CI = 22.9–47.1), while thirty-three out of forty-six cases settled after a denial (71.7%) (95% CI = 58.7–84.8). The *p*-value is < 0.001, and the confidence intervals do not overlap.

[189] Within the contract cases, seventeen out of thirty-five cases settled after a foreign antisuit injunction grant (48.6%) (95% CI = 32.0–65.1), compared with twenty-one out of twenty-seven after a denial (77.8%) (95% CI = 62.1–93.5). The *p*-value is 0.019.

[190] For the intellectual property cases, four out of nine cases settled after a court granted relief (44.4%) (95% CI = 12.0–76.9), while twelve out of thirteen cases settled after a denial (92.3%) (95% CI = 77.8–100.0). The *p*-value is 0.013.

[191] In the sample of arbitration cases, zero out of eighteen cases settled after a foreign antisuit injunction grant (0.0%) (95% CI = 0.0–0.0), while three out of five settled after a denial (60.0%) (95% CI = 17.1–100.0). The *p*-value is < 0.001.

[192] Within the tort cases, one out of two cases settled after a foreign antisuit injunction grant (50.0%) (95% CI = 0.0–100.0), while four out of five settled after a denial (80.0%) (95% CI = 44.9–100.0). The *p*-value is 0.427. For the other cases, three out of six settled after a foreign antisuit injunction grant (50.0%) (95% CI = 10.0–90.0), while five out of eight settled after a denial (62.5%) (95% CI = 29.0–96.0). The *p*-value is 0.640.

TABLE 2: CASE TYPE, FOREIGN ANTISUIT INJUNCTION (ASI) DECISION, AND SETTLEMENT RATE

Case Type	Settled|ASI Grant	Cases	Settled|ASI Denial	Cases	*p*-Value*
Contract	48.6%	17/35	77.8%	21/27	0.019
Arbitration	0.0%	0/18	60.0%	3/5	< 0.001
IP (Intellectual Property)	44.4%	4/9	92.3%	12/13	0.013
Tort	50.0%	1/2	80.0%	4/5	0.427
Other	50.0%	3/6	62.5%	5/8	0.640

Note. A two-sample z-test *p*-value < 0.05 means that the difference between two settlement rates is statistically significant.

C. Amount in Controversy

Amount in controversy is the next factor I considered that could have affected the results. The significant rise in settlement after foreign antisuit injunction denial also appears robust to the amount in controversy. There are conflicting theories for how the amount in controversy could impact settlement.[193] Yet, the amount in controversy did not correlate with a statistically significant difference in settlement.[194]

Since many complaints do not state the amount in controversy,[195] this study suffers from limited information. There were thirty-three high-value cases (worth $1,000,000 or more), eighteen low-value cases (worth less than

[193] When billions of dollars are at stake, the costs of litigating in multiple forums might not factor into a settlement decision. *See, e.g.*, Tahaya Misr Inv., Inc. v. Helwan Cement S.A.E., No. 16-cv-01001, 2016 WL 4072332 (C.D. Cal. July 27, 2016) (failing to discuss the costs of litigating in multiple forums); First Amended Complaint at 5, Tahaya Misr Inv. Inc. v. Helwan Cement S.A.E., No. 16-cv-01001 (C.D. Cal. Apr. 8, 2016) (requesting compensatory damages "in excess of $3,000,000,000.00"). By contrast, when disputes concern thousands of dollars, duplicative litigation may be an unjustifiable investment. *See, e.g.*, Complaint for Damages & Injunctive Relief at 21, Oracle Am., Inc. v. Myriad Grp. AG, No. 10-cv-05604 (N.D. Cal. Dec. 10, 2010) (requesting "at least $75,000 plus interest" in damages); *see also* Stipulation & Order for Dismissal with Prejudice of Claims at 1, Oracle Am., Inc. v. Myriad Grp. AG, No. 10-cv-05604 (N.D. Cal. Sept. 23, 2014) (stating that the parties settled). Of course, stakes may be so high that a company's financial survival hinges on the outcome. Some defendants in bet-the-company litigation might rather settle than try their luck. Then, litigation with low damages requests could be worth more to litigants than the amount in controversy. For example, plaintiffs often seek injunctive or declaratory relief in addition to monetary damages, or a case's outcome could require setting a precedent with consequences for higher stakes litigation later on. So it is hard to guess how the amount in controversy influences settlements in the aggregate.

[194] Fourteen out of thirty-three high-value cases settled (42.4%) (95% CI = 25.6–59.3), while ten out of eighteen low-value cases settled (55.6%) (95% CI = 32.6–78.5). The *p*-value is 0.369.

[195] *E.g.*, Complaint at 7, Sindhi v. Raina, No. 15-cv-03229 (N.D. Tex. Oct. 5, 2015) (requesting an unspecified amount in damages). Recall that I found case filings, including complaints, on Bloomberg Law's database of court dockets. *See supra* Sections III.C–III.D.

$1,000,000), and seventy-seven cases with unknown value. For high-value cases, the statistically significant rise in settlement after antisuit injunction denial persists.[196] While the sample of low-value cases was too small to achieve statistical significance, I found directional support.[197]

The small sample of cases with specified damages requests limits the usefulness of these results. With amount-in-controversy information for less than half of the sample, these results hardly clarify whether the amount in controversy may have interfered with the observed relationship between foreign antisuit injunction decision and settlement. Further empirical research on how the stakes in litigation influence settlement rates would be valuable—especially with a larger sample. Creating more than two amount-in-controversy groups would generate a more nuanced picture of the relationship between stakes and settlement. Certainly, future studies of parallel proceedings and settlement should attempt to disentangle the effects of duplicative litigation from the amount in controversy.

TABLE 3: AMOUNT IN CONTROVERSY, FOREIGN ANTISUIT INJUNCTION (ASI) DECISION, AND SETTLEMENT RATE

Amount in Controversy	**Settled|ASI Grant**	**Cases**	**Settled|ASI Denial**	**Cases**	***p*-Value***
High	25.0%	5/20	69.2%	9/13	0.012
Low	45.5%	5/11	71.4%	5/7	0.280
Unknown	38.5%	15/39	81.6%	31/38	< 0.001

Note. A two-sample z-test p-value < 0.05 means that the difference between two settlement rates is statistically significant.

D. Repetitive and Reactive Litigation

The next factor I examined that could have affected the results is repetitive versus reactive litigation. A significant rise in settlement after foreign antisuit injunction denial persisted among repetitive and reactive cases. The settlement rates were not meaningfully different comparing repetitive and reactive suits.[198] This is surprising because, in theory, the

[196] Five out of twenty high-value cases settled after a foreign antisuit injunction grant (25.0%) (95% CI = 6.0–44.0), while nine out of thirteen settled after a denial (69.2%) (95% CI = 44.1–94.3). The p-value is 0.012, and the confidence intervals do not overlap.

[197] Five out of eleven low-value cases settled after an antisuit injunction grant (45.5%) (95% CI = 16.0–74.9), while five out of seven settled after a denial (71.4%) (95% CI = 38.0–100.0). The p-value is 0.280.

[198] Nine out of eighteen repetitive suits settled (50.0%) (95% CI = 26.9–73.1), while sixty-one out of 110 reactive suits settled (55.5%) (95% CI = 56.2–64.7). The p-value is 0.667.

repetitive or reactive nature of a parallel suit could indicate the filer's motive, which some courts consider in deciding foreign antisuit injunction motions.[199] And repetitive litigation could indicate harassing behavior or litigation–resource asymmetry. In other words, parties who bring multiple suits in varying forums may tend to be wealthier and more able—if not willing—to bully their opponents into settlement.

Nonetheless, the settlement rate was significantly higher after antisuit injunction denials within both reactive[200] and repetitive cases.[201] While it remains possible that the reactive or repetitive nature of litigation has some relationship with settlement, the connection between foreign antisuit injunction decisions and settlement appears to be much stronger.

TABLE 4: REACTIVE OR REPETITIVE SUIT, FOREIGN ANTISUIT INJUNCTION (ASI) DECISION, AND SETTLEMENT RATE

Reactive or Repetitive	**Settled|ASI Grant**	**Cases**	**Settled|ASI Denial**	**Cases**	***p*-Value***
Reactive	36.2%	21/58	76.9%	40/52	< 0.001
Repetitive	33.3%	4/12	83.3%	5/6	0.046

Note. A two-sample z-test *p*-value < 0.05 means that the difference between two settlement rates is statistically significant.

E. Published and Unpublished Opinions

The next potentially influential factor I measured is whether the cases produced published or unpublished opinions. Drawing my sample from Westlaw and Lexis creates a selection-bias concern.[202] Yet, comparing published and unpublished opinions can inform a guess about which direction any case-publication bias tilts here.[203] Initially, foreign antisuit injunction outcomes did not reflect much difference between published and unpublished opinions.[204] Even breaking antisuit injunction outcomes down

[199] *See supra* notes 45–50 and accompanying text (discussing repetitive and reactive litigation).

[200] Twenty-one out of fifty-eight reactive suits settled after an antisuit injunction grant (36.2%) (95% CI = 23.8–48.6), while forty out of fifty-two settled after a denial (76.9%) (95% CI = 65.5–88.4). The confidence intervals do not overlap, and the *p*-value is < 0.001.

[201] Four out of twelve repetitive suits settled after an antisuit injunction grant (33.3%) (95% CI = 6.7–60.0), while five out of six settled after a denial (83.3%) (95% CI = 53.5–100.0). The *p*-value is 0.046.

[202] *See supra* Section III.B.

[203] *See* Cheng, *supra* note 122, at 152 (coining "case-publication bias"); Baumgartner & Whytock, *supra* note 132, at 132–33; *supra* Section III.B.

[204] Eighteen out of thirty-one published opinions granted antisuit injunctions (58.1%) (95% CI = 40.7–75.4), compared with fifty-two out of ninety-seven unpublished opinions (53.6%) (95% CI = 43.7–63.5). The *p*-value is 0.664.

further by legal standard (restrictive or permissive) did not produce much variation.[205] From these comparisons, it is unclear how outcomes in unavailable opinions might differ from unpublished cases. Assuming unavailable cases are easier to resolve than unpublished cases, the proportion of antisuit injunction movants with strong and weak arguments could be similar. Likewise, settlement rates after published versus unpublished antisuit injunction opinions were not meaningfully different.[206]

Yet, as Table 5 shows, the rise in settlement after foreign antisuit injunction denial was significant within unpublished—but not published—opinions.[207] This difference is noteworthy for two reasons:

First, finding directional, but statistically insignificant, support for the settlement effect within published cases could suggest that, for litigants who argue more complex or novel antisuit injunction issues, the costs of parallel litigation are less likely to influence settlement. If novel or complex antisuit injunction motions are more costly to argue, cases with published opinions may tend to involve higher stakes, or the parties may tend to have more resources. Either generality could, in turn, reduce the impact of the costs of parallel litigation on settlement. In published cases, other factors such as the information impact of the decision—which would be the same whether the court grants or denies the motion—might be more likely to influence settlement. Decisions on difficult foreign antisuit injunction motions—whether grants or denials—could impact settlement more evenly than decisions on straightforward motions. By contrast, the information impact of an unpublished decision on a straightforward issue would seem to be less influential since the decision is more likely to align with the parties' expectations. Perhaps, as the odds of an antisuit injunction motion's success approach 50%, the likelihood decreases that the higher costs of litigation after a denial will prompt settlement.

Second, to the extent any difference between published and unpublished opinions is driving the difference in settlement effects, unavailable opinions may differ from unpublished opinions in the same way.[208] Further, if unpublished opinions have a lower information impact on

---

[205] In restrictive circuits, thirteen out of twenty-one published opinions granted relief (61.9%) (95% CI = 41.1–82.7), compared with twenty-seven out of fifty-two unpublished opinions (51.9%) (95% CI = 38.3–65.5). The *p*-value is 0.438. And in permissive circuits, three out of eight published opinions granted relief (37.5%) (95% CI = 4.0–71.0), compared with twenty-four out of forty-two unpublished opinions (57.1%) (95% CI = 42.2–72.1). The *p*-value is 0.307.

[206] Seventeen out of thirty-one published cases settled (54.8%) (95% CI = 37.3–72.4), compared with fifty-three out of ninety-seven unpublished cases (54.6%) (95% CI = 44.7–64.5). The *p*-value is 0.984.

[207] *See infra* Table 5.

[208] *See supra* Section III.B; Baumgartner & Whytock, *supra* note 132, at 132–33.

settlement than published opinions, and litigation costs have a greater influence on settlement in unpublished than published cases, these differences could extend to unavailable cases. That is, unavailable opinions might have an even lower information impact on settlement than unpublished opinions, which squares with previous findings that unavailable opinions are more mundane than available opinions. And litigation costs may influence more settlements after unavailable opinions, compared with unpublished opinions. This would also make sense if parties pressing complex or novel antisuit injunction arguments tend to have deeper pockets than parties arguing more straightforward motions in unavailable cases.

So I would expect the rise in settlement after foreign antisuit injunction denials to be more extreme among unavailable cases than unpublished cases. Of course, studying the unavailable opinions would be the best way to confirm or refute my hypothesis. Alternatively, a future study without the means to collect all unavailable opinions could rely on regression analysis.[209]

TABLE 5: PUBLISHED AND UNPUBLISHED OPINIONS, FOREIGN ANTISUIT INJUNCTION (ASI) DECISION, AND SETTLEMENT RATE

Opinion	**Settled|ASI Grant**	**Cases**	**Settled|ASI Denial**	**Cases**	***p*-Value***
Published	44.4%	8/18	69.2%	9/13	0.171
Unpublished	32.7%	17/52	80.0%	36/54	< 0.001

Note. A two-sample z-test p-value < 0.05 means that the difference between two settlement rates is statistically significant.

F. Dispositive Motions

Decisions on dispositive motions to dismiss or motions for summary judgment could also theoretically affect settlement rates. Since litigation is expensive, especially discovery and trials,[210] when courts refuse either to dismiss a case or grant summary judgment, settlement might become more desirable to cost-conscious litigants.[211] Further, denials of motions to dismiss

[209] *See* Cheng, *supra* note 122, at 158 (proposing a method of regression modeling to detect and correct case-publication bias).

[210] Paula Hannaford-Agor, *Measuring the Cost of Civil Litigation: Findings from a Survey of Trial Lawyers*, 2013 VOIR DIRE 22, 26 & tbl.2, https://www.ncsc.org/__data/assets/pdf_file/0035/27989/measuring-cost-civil-litigation.pdf [https://perma.cc/85SA-KWRY] (showing that trial and discovery, across case types, are the two most expensive phases of litigation).

[211] *See* Brunet, *supra* note 127, at 692 ("When a motion for summary judgment is denied, the settlement value of a claim increases. . . . The filing of a motion to dismiss for failure to state a claim under Rule 12(b)(6) is likely to create a similar settlement premium.").

or motions for summary judgment could induce settlements by clarifying or narrowing issues and reducing uncertainty about the likely outcome.[212]

But there is no clear relationship between dispositive motion decisions and foreign antisuit injunction motion decisions: the former often reflect the merits of the underlying suit;[213] the latter should not.[214] Whatever the relationship between dispositive motion decisions and settlement, it should not have influenced the observed relationship between foreign antisuit injunction denial and settlement. The numbers support this hunch. Excluding the sixteen cases where courts granted dispositive motions—none of which settled—the significant rise in settlement after foreign antisuit injunction denial persisted.[215]

Likewise, I observed a significant settlement effect within the cases where courts denied motions to dismiss[216] and cases in which dispositive

---

[212] *See id.* at 697 ("Many commentators note that uncertainty deters settlement."); John H. Langbein, *The Disappearance of Civil Trial in the United States*, 122 YALE L.J. 522, 565 (2012) ("Cases that resist settlement are typically those in which there is material uncertainty about the relevant legal rules, or in which the facts remain doubtful despite discovery."); Rave, *supra* note 127, at 894 ("[I]f the parties had perfect information about their likelihood of success, and their ranges of acceptable settlements overlapped, all rational parties would settle."). On the other hand, some parties may prefer not to settle if the resources they have invested in arguing over summary judgment or dismissal will be reusable at later stages of litigation. *See* Rave, *supra* note 127, at 892–93; *see also* Jonah B. Gelbach, *Rethinking Summary Judgment Empirics: The Life of the Parties*, 162 U. PA. L. REV. 1663, 1671–73 (2014) (discussing how the summary judgment standard might influence party behavior, including the likelihood of settlement); Jonah B. Gelbach, *Locking the Doors to Discovery? Assessing the Effects of* Twombly *and* Iqbal *on Access to Discovery*, 121 YALE L.J. 2270, 2302–05 (2012) (using an economic litigation model to suggest that raising the pleading standard—and making dismissals more attainable—could induce some settlements and prevent others); William H.J. Hubbard, Stalling, Conflict, and Settlement 5 (Aug. 22, 2018) (unpublished manuscript) (on file with the *Northwestern University Law Review*) (explaining that the threat of "stalling"—i.e., negotiating to delay an adversary's action—"induces perfectly rational actors in a symmetric-information context to resort to litigation (which is costly) rather than attempting to settle out of court for free.").

[213] *See* Bert I. Huang, *Trial by Preview*, 113 COLUM. L. REV. 1323, 1325 (2013) ("The major 'checkpoints' of civil procedure—motions to dismiss, class certification, summary judgment—have come to focus more intently on the merits . . . ."); Rave, *supra* note 127, at 894 (2006) ("[A] denial of summary judgment can send a signal that the judge thinks the claim has some merit."); *see also* Jonah B. Gelbach, *Material Facts in the Debate over* Twombly *and* Iqbal, 68 STAN. L. REV. 369, 372–77 (2016) (discussing the apparent impossibility of testing the theoretical relationship between the Rule 12(b)(6) standard and the merits of underlying cases).

[214] *See supra* Part II.

[215] Removing the dispositive-motion-granted cases, twenty-five out of fifty-nine cases settled after a foreign antisuit injunction grant (42.4%) (95% CI = 29.8–55.0), while forty-five out of fifty-two cases settled after an injunction denial (86.5%) (95% CI = 77.3–95.8). The confidence intervals do not overlap, and the p-value is < 0.001.

[216] Within the cases where courts denied dispositive motions to dismiss, eighteen out of thirty-three cases settled after a foreign antisuit injunction grant (54.5%) (95% CI = 37.6–71.5), while twenty-two out of twenty-six settled after an injunction denial (84.6%) (95% CI = 70.7–98.5). Comparing these proportions, the p-value is 0.014.

motions were not filed.[217] And I found directional support for the same effect among cases where courts denied motions for summary judgment, although the rise in settlement did not quite achieve statistical significance, due to the small sample size, with a *p*-value of 0.058.[218] The settlement rate rose—though not significantly—after courts denied dispositive motions compared with cases where dispositive motions were not filed or not decided.[219] Yet the persistence of the settlement effect after foreign antisuit injunction denials, notwithstanding decisions on dispositive motions, suggests that antisuit injunction decisions may have a stronger connection to settlement than dispositive motion decisions. At least for cases with international parallel proceedings, the relationship between certainty and settlement discussed in previous scholarship might not be a complete picture.

G. Future Studies

This study's findings should encourage future research on the relationship between international parallel proceedings and settlement. To confirm and expand on this study's initial findings, larger samples capturing additional case characteristics will be helpful. This study measured readily available data on factors that could have influenced settlement and interfered with the observed correlation between foreign antisuit injunction denials and higher settlement rates. In addition to the factors discussed above, I measured settlement rates by legal standard,[220] movant citizenship,[221] basis of

[217] For the cases where dispositive motions to dismiss were not filed or not decided, seven out of thirty cases settled after a foreign antisuit injunction grant (23.3%) (95% CI = 8.2–38.5), whereas twenty-three out of twenty-nine settled after an injunction denial (79.3%) (95% CI = 64.6–94.1). The *p*-value is < 0.001. Then, for cases where summary judgment motions were not filed or not decided, twenty-one out of fifty-seven cases settled after a foreign antisuit injunction grant (36.8%) (95% CI = 24.3–49.4), while thirty-two out of thirty-nine settled after a denial (82.1%) (95% CI = 70.0–94.1). The *p*-value is < 0.001.

[218] Within the cases where courts denied dispositive summary judgment motions, four out of nine settled after a foreign antisuit injunction grant (44.4%) (95% CI = 12.0–76.9), while thirteen out of sixteen settled after an injunction denial (81.3%) (95% CI = 62.1–100.0). The *p*-value is 0.058.

[219] Forty out of fifty-nine cases settled after a court denied a motion to dismiss (67.8%) (95% CI = 55.9–79.7), while thirty out of fifty-nine cases settled where a dispositive motion to dismiss was not filed or not decided (50.8%) (95% CI = 38.1–63.6). The *p*-value is 0.061. Then, seventeen out of twenty-five cases settled after a court denied a dispositive summary judgment motion (68.0%) (95% CI = 49.7–86.3), while fifty-three out of ninety-six cases settled where no dispositive summary judgment motion was filed or decided (55.2%) (95% CI = 45.3–65.2). The *p*-value is 0.249.

[220] Thirty-seven out of seventy-three cases settled in restrictive circuits (50.7%) (95% CI = 39.2–62.2), and thirty-one out of fifty cases settled in permissive circuits (62.0%) (95% CI = 48.5–75.5). The difference is not significant, with a *p*-value of 0.215. Meanwhile, two out of five cases settled in the undecided Fourth Circuit.

[221] There are two ways to code movant citizenship: (1) including movants with both U.S. and foreign citizenship as U.S.-citizen movants (version one); or (2) counting U.S.-and-foreign-citizen movants as foreign-citizen movants (version two). For version one, fifty-three out of eighty-nine cases with U.S.-

jurisdiction,[222] and first-filed forum[223]—none of which produced meaningful differences in settlement rates. And the foreign antisuit injunction settlement effect persisted despite legal standard,[224] movant citizenship,[225] basis of jurisdiction,[226] and first-filed forum.[227] But I lacked information to measure several other potentially influential factors. Three examples follow.

citizen movants for foreign antisuit injunction settled (59.6%) (95% CI = 49.4–69.7), and seventeen out of thirty-nine cases settled after foreign-only movants sought to enjoin foreign litigation (43.6%) (95% CI = 28.0–59.2). The difference is not statistically significant: the *p*-value is 0.095. Then, for version two, thirty-nine out of seventy cases with U.S.-citizen-only movants settled (55.7%) (95% CI = 44.1–67.4), and thirty-one out of fifty-eight cases with foreign movants settled (53.4%) (95% CI = 40.6–66.3). Again, the difference is insignificant, with a *p*-value of 0.798.

[222] Thirty-seven out of seventy federal question cases settled (52.9%) (95% CI = 41.2–64.6), and thirty-three out of fifty-eight diversity cases settled (56.9%) (95% CI = 44.2–69.6)—an insignificant difference. The *p*-value is 0.648.

[223] Forty-one out of seventy-seven cases filed first in the United States settled (53.2%) (95% CI = 42.1–64.4); twenty-eight out of fifty cases filed first abroad settled (56.0%) (95% CI = 42.2–69.8). Comparing these rates, the *p*-value is 0.761. One case settled after the parties filed suits in the United States and abroad on the same day.

[224] In restrictive circuits, twelve out of forty cases settled after an antisuit injunction grant (30.0%) (95% CI = 15.8–44.2), while twenty-five out of thirty-three settled after a denial (75.8%) (95% CI = 61.1–90.4). The *p*-value is < 0.001. In permissive circuits, twelve out of twenty-seven cases settled after a grant (44.4%) (95% CI = 25.7–63.2), compared with nineteen out of twenty-three after a denial (82.6%) (95% CI = 67.1–98.1). The *p*-value is 0.006.

[225] For U.S.-citizen movants (version one), twenty out of forty-eight cases settled after an antisuit injunction grant (41.7%) (95% CI = 27.7–55.6), whereas thirty-three out of forty-one settled after a denial (80.5%) (95% CI = 68.4–92.6). The confidence intervals do not overlap, and the *p*-value is < 0.001. For foreign-citizen movants (version one), five out of twenty-two cases settled after an antisuit injunction grant (22.7%) (95% CI = 5.2–40.2), whereas twelve out of seventeen settled after a denial (70.6%) (95% CI = 48.9–92.2). The confidence intervals do not overlap, and the *p*-value is 0.003. Then, for U.S.-citizen movants (version two), thirteen out of thirty-six cases settled after an antisuit injunction grant (36.1%) (95% CI = 20.4–51.8), while twenty-six out of thirty-four settled after a denial (76.5%) (95% CI = 62.2–90.7). Again, the confidence intervals do not overlap, and the *p*-value is 0.001. For foreign-citizen movants (version two), twelve out of thirty-four cases settled after an antisuit injunction grant (35.3%) (95% CI = 19.2–51.4), and nineteen out of twenty-four settled after a denial (79.2%) (95% CI = 62.9–95.4). The confidence intervals do not overlap, and the *p*-value is < 0.001. *See supra* note 221 (explaining the two ways I coded citizenship).

[226] Within federal question cases, eleven out of thirty-eight settled after an antisuit injunction grant (28.9%) (95% CI = 14.5–43.4), while twenty-six out of thirty-two settled after a denial (81.3%) (95% CI = 67.1–94.8). The confidence intervals do not overlap, and the *p*-value is < 0.001. Then, for diversity cases, fourteen out of thirty-two settled after a grant (43.8%) (95% CI = 26.6–60.9), whereas nineteen out of twenty-six settled after a denial (73.1%) (95% CI = 56.0–90.1). The *p*-value is 0.025.

[227] For cases first filed in the United States, sixteen out of forty-six settled after an antisuit injunction grant (36.4%) (95% CI = 16.3–56.5), while twenty-two out of twenty-eight settled after a denial (78.6%) (95% CI = 63.4–93.8). The confidence intervals do not overlap, and the *p*-value is < 0.001. And for cases first filed abroad, eight out of twenty-two settled after a grant (36.4%) (95% CI = 16.3–56.5), while twenty out of twenty-seven settled after a denial (74.1%) (95% CI = 57.5–90.6). The *p*-value is 0.008, and again, the confidence intervals do not overlap.

1. Domestic Policy Interests

The presence of domestic policy interests could have affected the results of this study. The enforcement of U.S. law is among the policy interests courts weigh in deciding motions to enjoin foreign parallel proceedings.[228] And parties often argue that foreign litigation threatens policy interests.[229] The greater the public interest in deciding an issue of domestic law, the more likely a U.S. court should be to enjoin litigation that threatens its decision.[230] But in practice, courts are far from uniform in weighing such policy interests.[231] Further, some litigants may insist that foreign litigation threatens domestic policy to advance their preferred outcome—not because the public policy interest is so important that it would influence their decision whether to settle.

Courts' flexibility in weighing domestic policy and the black box of litigants' motives in raising policy arguments may complicate efforts to measure the effect of domestic policy interests on settlement. I do not attempt to do so here. Nonetheless, domestic policy interests could theoretically influence both or either the independent variable (foreign antisuit injunction decision) and dependent variable (settlement). A future study seeking to measure the effect of domestic policy interests on settlement could develop a proxy for the importance of asserted policy interests, such as whether a court rejects or relies on the assertion. Alternatively, surveying litigants

---

[228] *Supra* Part II.

[229] *See, e.g.*, Huawei Techs., Co. v. Samsung Elecs. Co., No. 16-cv-02787, 2018 WL 1784065, at *9 (N.D. Cal. Apr. 13, 2018) ("Samsung argues that allowing Huawei to enforce the Shenzhen Court's injunction would frustrate specific domestic policies against injunctive relief on [standard essential patents] and general public policies against anticompetitive conduct and breaches of contract."); E. I. DuPont de Nemours & Co. v. Agfa NV, No. 18-cv-00326, 2018 WL 7283319, at *41 (E.D. Va. Oct. 30, 2018) ("DuPont asserts that the 'public interest is served by upholding and protecting valid copyrights, holding parties to their contractual obligations, and preventing unfair and deceptive business practices and the kinds of damaging business conspiracies in which [defendant] has engaged.'" (quoting Sealed Memorandum in Support of Motion for Temporary Restraining Order & Preliminary Injunction, E. I. DuPont de Nemours & Co. v. Agfa NV, No. 18-cv-00326 (E.D. Va. June 27, 2018))).

[230] *See* BAE Sys. Tech. Sol. & Servs., Inc. v. Republic of Korea's Def. Acquisition Program Admin., 195 F. Supp. 3d 776, 790–91 (D. Md. 2016) (reasoning that "national security surely is a sufficient public policy . . . to warrant an injunction," but expressing uncertainty over whether the foreign action implicated that issue); Teck Metals Ltd. v. Certain Underwriters at Lloyd's, No. 05-cv-00411, 2009 WL 4716037, at *3 (E.D. Wash. Dec. 8, 2009) (recognizing "Washington's asserted public interest in . . . its natural environment").

[231] *Compare* C.D.S., Inc. v. Bradley Zetler, CDS, LLC, 213 F. Supp. 3d 620, 629 (S.D.N.Y. 2016) ("Although the United States has an important interest in uniform application of its copyright laws, '[t]he presumptive enforceability of forum selection clauses reflects a strong federal public policy of its own.'" (quoting Martinez v. Bloomberg LP, 740 F.3d 211, 218 (2d Cir. 2014))), *with* Lite On It Corp. v. Toshiba Corp., No. 07-cv-04758, 2009 WL 10673953, at *1 (C.D. Cal. Jan. 12, 2009) ("[P]laintiff has proffered two policies that would be frustrated were defendant allowed to proceed with the enforcement action in Taiwan: The enforceability of forum selection clauses and notions of finality of judgments. Plaintiff's argument is not well-taken.").

could provide evidence of which public policy interests are most impactful on decisions to settle or move toward trial.

2. Case Strength

Case strength on the merits may have affected the settlement rates observed.[232] Conclusive findings on the effect of international parallel proceedings on settlement will require isolating the pressure of litigation costs from the influence of case quality. Unfortunately, direct data on case strength were not available for this study's sample of cases. A future study might use proxies—such as motion-to-dismiss decisions or responsive pleadings—to classify cases as either meritorious or nonmeritorious.[233] Yet, the application of U.S. or foreign law can affect case strength,[234] which could weaken a proxy that depends on the pleadings in U.S. court dockets alone. Substantive knowledge of foreign law seems necessary for a comprehensive study. To the extent possible, measurements of case strength should account for differences in applicable foreign law.

3. Asymmetrical Resources

Resource asymmetry could influence settlement rates. The high cost of litigation may pressure parties with fewer resources to settle, even if the law is on their side.[235] Conversely, some plaintiffs pursue lawsuits against deeper pocketed defendants in the hopes of extracting a quick settlement.[236] If wealthy litigants tend to hire more expensive attorneys, they may be more susceptible to settlement pressure through extensive motion practice by

---

[232] Sunshine & Pereyra, *supra* note 126, at 388 ("Meritorious cases settle at a higher rate than nonmeritorious cases."); Eisenberg & Lanvers, *supra* note 18, at 125 ("Strong filed cases tend to settle; weak ones do not.").

[233] *See* Sunshine & Pereyra, *supra* note 126, at 385 (using unsuccessful motions to dismiss and the filing of answers to classify cases as "meritorious" or "nonmeritorious"). This study's sample of cases—93.0% of which would count as "meritorious" under Sunshine and Pereyra's test—would require a more nuanced proxy.

[234] *See, e.g.*, Laker Airways Ltd. v. Sabena, Belgian World Airlines, 731 F.2d 909, 945–47 (D.C. Cir. 1984) (observing that U.S. antitrust law "is much more aggressive than British regulation of restrictive practices").

[235] Alexandra D. Lahav, *Symmetry and Class Action Litigation*, 60 UCLA L. REV. 1494, 1522 (2013) ("Because a lawsuit is costly and the outcome uncertain, litigants may feel pressure to settle even if the law is on their side and they stand on equal footing with their opponents. But matters are made worse when there is significant asymmetrical power distribution.").

[236] *See, e.g.*, Peter Watson, *Patent Trolls' Underhanded Trade Schemes Must Be Stopped*, HILL (Sept. 24, 2021, 1:01 PM), https://thehill.com/opinion/finance/573778-its-time-to-stop-patent-trolls-underhanded-schemes-on-trade [https://perma.cc/J4BF-PKLS] (describing the rise of "patent trolls," or plaintiffs who file "flimsy" patent claims against large companies, "gambl[ing] that companies would rather settle quickly than spend years battling toward victory in federal court").

opponents with lawyers working on contingency.[237] Maybe the amount in controversy—for which I had limited data[238]—is a proxy for litigants' collective resources. And resource asymmetries could be more common in cases of repetitive litigation.[239] But I did not attempt to directly measure imbalances between parties' resources. Future studies should try.

Information on the yearly assets, revenues, and profit margins of publicly owned companies and large private companies is readily available.[240] That information is generally more difficult to find for individual and smaller organizational litigants. Yet, available information and reasonable inferences might be sufficient to conduct a meaningful study. For example, if individual litigants tend to have less money to invest in litigation than business associations, the type of litigant could serve as a proxy for resources. Additionally, some judicial opinions take note of asymmetrical resources.[241] So it seems possible—and worthwhile—to measure the relationship between asymmetrical litigation resources and settlement.

* * *

This study revealed a statistically significant rise in settlement after foreign antisuit injunction denials.[242] But other factors could have contributed to the trend. While the settlement effect persisted within most of the variables I measured, data were missing for other potentially influential factors. Larger studies and regression analysis are necessary for a more compelling demonstration of the relationship between international parallel proceedings and settlement.

---

[237] *See* Joy v. North, 692 F.2d 880, 887 (2d Cir. 1982) ("Derivative suits may be brought for their nuisance value, the threat of protracted discovery and litigation forcing settlement and payment of fees even where the underlying suit has modest merit."); Jordan Rothman, *Fighting an Asymmetrical Battle in Litigation*, ABOVE THE L. (July 21, 2021, 1:13 PM), https://abovethelaw.com/2021/07/fighting-an-asymmetrical-battle-in-litigation [https://perma.cc/2SZV-7TWM] (explaining that small law firms, often working on contingency, "can sometimes play a war of attrition against larger law firms because each motion, deposition, discovery demand, and other aspect of litigation may cost the client of a large law firm several times more than the client of a smaller law firm").

[238] *See supra* Section IV.E; *supra* Table 5.

[239] *See supra* Sections I.B, IV.F.

[240] *See, e.g.*, Tesla, Inc., Annual Report (Form 10-K) 45–95 (Feb. 4, 2022) (reporting Tesla's financial performance); HUAWEI INV. & HOLDING CO., 2020 ANNUAL REPORT 7 (2021) (self-reporting the "five-year financial highlights" of Huawei, a private company).

[241] *See, e.g.*, Bro-Tech Corp. v. Thermax, Inc., No. 05-cv-02330, 2007 WL 2597618, at *4 (E.D. Pa. Sept. 4, 2007) (describing a defendant as "judgment-proof").

[242] *Supra* Section IV.A; *supra* Table 1.

In addition to further studies on antisuit injunctions, studies on lis alibi pendens or forum non conveniens cases would help to confirm or deny the existence of the settlement effect. Decisions to stay or dismiss—such as foreign antisuit injunction decisions—either consolidate parallel proceedings into a single forum or allow duplicative litigation to continue.[243] Duplicative litigation creates higher litigation costs, which are likely to influence settlement. All these decisions—whether to stay, dismiss, or enjoin—provide certainty to the parties, which can lead to more settlements. And because these motions do not touch the merits like motions for summary judgment or Rule 12(b)(6) dismissals do, the resources litigants invest in these motions are unlikely to save costs in later stages of litigation. In light of the United States' world-leading litigation costs,[244] I would expect a strong settlement effect after courts deny motions to stay or dismiss domestic litigation in favor of foreign proceedings.

Empirical research on settlement rates after state court decisions on motions to stay or enjoin foreign litigation, or for forum non conveniens dismissals, would be valuable too. Highlighting differences between state and federal approaches could further inform the evolution of these doctrines.

V. RESOLVING THE CIRCUIT SPLIT

Although further research is necessary to determine whether international parallel proceedings cause settlement rates to rise, this study has shown a correlation. Even the possibility of abuse of judicial resources through parallel proceedings should concern readers. Courts could shrug off the potential of foreign duplicative litigation to exert unfair settlement pressure as a "cost of doing judicial business,"[245] but that would be a mistake. Further, a uniform legal standard will help facilitate international commerce.[246] So the Supreme Court should resolve the circuit split over foreign antisuit injunctions in favor of the permissive approach.

The permissive approach, although imperfect, is better than the restrictive approach.[247] As discussed, the restrictive approach places undue

---

[243] *See* BORN & RUTLEDGE, *supra* note 14, at 532.

[244] *See* U.S. CHAMBER INST. FOR LEGAL REFORM, *supra* note 106, at 2, 3, 6; LAWS. FOR CIV. JUST. ET AL., *supra* note 106, at 3.

[245] Redish, *supra* note 29, at 1353 (discussing the burdens and waste of duplicative state and federal litigation).

[246] *See* Gau Shan Co. v. Bankers Tr. Co., 956 F.2d 1349, 1355 (6th Cir. 1992) ("International commerce depends in no small part on the ability of merchants to predict the likely consequences of their conduct in overseas markets.").

[247] For an argument that the permissive approach favors U.S. movants and is therefore offensive to foreign nations, see Heim, *supra* note 115, at 735–41. *But cf.* Whytock, *supra* note 119, at 774–75, 788

(and uncertain) weight on international comity.[248] Under this approach, speculative fear of retaliation by foreign sovereigns or respect for unarticulated foreign policy can overpower the policy interests of U.S. courts and litigants in fairness, convenience, efficiency, and enforcing U.S. law.[249] In some cases, international comity will justify judicial restraint. But the potential impact of an injunction on foreign relations in those cases will tend to be obvious from the nature of the issues and the parties' arguments.[250] By contrast, the intent of the party filing foreign duplicative litigation will be less so.[251] Parties facing settlement pressure may avoid saying so to the court, which could risk weakening their position in impending negotiations.[252] However courts choose to define comity,[253] permitting litigants to abuse foreign judicial resources is an odd form of courtesy.

Returning to *Athina Investments Ltd. v. Pinchuk* helps illustrate the problem with the restrictive approach.[254] In *Athina*, the Massachusetts district court rejected the plaintiffs' argument that foreign parallel litigation intentionally threatened their financial ability to continue litigating in Massachusetts.[255] But the court failed to articulate how enjoining the parallel litigation in Moscow might harm the United States' relations with Russia, and instead concluded with vague and prophylactic deference to comity—proclaiming that it could "envision no scenario under which comity would not carry the day."[256]

Indeed, comity led the court to reason that the "Moscow action presents no direct threat to [the court's] ability to manage the Massachusetts action

(conducting an empirical study of international choice of law decisions and finding, despite "common claims of 'xenophobia' in U.S. courts, district court judges' international choice-of-law decisions do not appear to be systematically biased against foreign litigants"); *see also* Tan, *supra* note 21, at 312–13 (suggesting a two-step test that separates the comity inquiry from "other equitable and policy considerations against which comity cannot be easily analyzed.").

248 *See supra* Section I.C.

249 *See* Weinberg, *supra* note 67, at 55, 70–71, 74; Ramsey, *supra* note 67, at 893–94; Paul, *supra* note 56, at 56, 68; Tan, *supra* note 21, at 303–13.

250 *Cf., e.g.*, Bermann, *supra* note 54, at 608 n.75 (observing that the "*Laker* case developed into a full-scale diplomatic episode").

251 *See* Vestal, *supra* note 45, at 526–28 (noting the impossibility of "ascertain[ing] the motivating factor [behind duplicative litigation] in every case").

252 *Cf. In re* Rhone-Poulenc Rorer Inc., 51 F.3d 1293, 1299 (7th Cir. 1995) ("For obvious reasons [the defendants] did not point out . . . that if mandamus is denied they will be forced to settle—for such an acknowledgement would greatly weaken them in any settlement negotiations. We should be realistic about what is feasible to put in a public brief.").

253 *See supra* Section I.B.

254 443 F. Supp. 2d 177 (D. Mass. 2006).

255 *See id.* at 179, 181.

256 *Id.* at 182.

and bring it to trial."[257] But that point is far from certain: if the defendant exhausted the plaintiffs' resources to litigate, there could be no trial. The court similarly declared that the foreign duplicative litigation did not "imperil public policies to an extent that would justify an injunction" in light of "the forum's substantial interest in international comity."[258] Yet, that reasoning undervalued the interests in fair and efficient dispute resolution that the court shared with the plaintiffs and U.S. taxpayers who fund these proceedings.[259] The district court also failed to clarify whether enjoining parallel litigation of the private defamation action in the Moscow arbitration court would have offended Russia. By denying the antisuit injunction motion, the district court allowed the defendant to pressure the plaintiffs into settlement within months.[260]

Similarly, in *Bro-Tech Corp. v. Thermax, Inc.*, a district court sitting under the restrictive Third Circuit refused to enjoin the plaintiffs' repetitive trade-secret litigation in England against an individual defendant, even if it accepted the defendant's argument that the purpose of the English action was to harass him.[261] In so ruling, the district court refrained from "question[ing] the propriety of Plaintiffs' tactic of naming [the defendant]—who is almost certainly judgment-proof—in the foreign proceeding."[262] In other words, forcing a defendant with limited resources to litigate in two forums is fair game. The court further "recognize[d] . . . that [the defendant] may not have the financial resources to mount a defense in the English action . . . . Even if the English action is entirely duplicative, unnecessary, vexatious, inconvenient, and filed solely for the purpose of harassing [the defendant]," the court continued, "and he truly cannot participate meaningfully in the foreign proceeding, these factors would be insufficient to justify an injunction."[263] Under this reasoning, it is hard to imagine anything that would justify an injunction. Unsurprisingly, *Bro-Tech* settled.[264]

---

[257] *See id.* at 181.

[258] *Id.* at 181–82.

[259] *Id.*; *cf.* Redish, *supra* note 29, at 1353 (discussing the significant harm that duplicative state and federal litigations impose on the judicial system and litigants).

[260] *See Athina*, 443 F. Supp. 2d at 178 ("[A]ccording to the plaintiffs, the Moscow action is nothing more than a backdoor attempt . . . to subvert their Massachusetts action by placing extreme financial pressure on Mr. Kolomoisky."); Notice of Dismissal, Athina Invs. Ltd. v. Pinchuk, No. 06-cv-10560 (D. Mass. Nov. 24, 2006); Bochetto, *supra* note 1.

[261] *See* No. 05-cv-02330, 2007 WL 2597618, at *4 (E.D. Pa. Sept. 4, 2007).

[262] *Id.*

[263] *Id.*

[264] Stipulated Order of Dismissal, Bro-Tech Corp. v. Thermax Inc., No. 05-cv-02330 (E.D. Pa. Feb. 23, 2010); Ryan Davis, *Thermax to Pay $38M to Settle Purolite Secrets Case*, LAW360 (Feb. 24, 2010, 1:57 PM), https://www.law360.com/articles/151744/thermax-to-pay-38m-to-settle-purolite-secrets-case

Permissive courts, on the other hand, would likely have reached the opposite result from *Athina* or *Bro-Tech*.[265] One recent example is *Huawei Technologies Co. v. Samsung Electronics Co.*,[266] a 2018 decision from the Northern District of California, which sits in the permissive Ninth Circuit. During the case, Samsung filed a motion to enjoin Huawei from enforcing a Chinese court's order that Samsung was infringing two of Huawei's patents; in that context, Huawei's vice president bragged that the company uses lawsuits as a "bargaining chip."[267]

The district court found that the foreign proceeding "interefere[d] with 'equitable considerations' by compromising the court's ability to reach a just result . . . free of external pressure on [Samsung] to" settle.[268] Even without evidence that Samsung lacked the resources to continue litigating in both the domestic and foreign forum—the situation the *Athina* plaintiffs faced—the *Huawei* district court granted the antisuit injunction motion.[269] Likewise, in *Microsoft Corp. v. Motorola, Inc.*, the Ninth Circuit granted a foreign antisuit injunction after expressing the same concern that a parallel proceeding would lead to a pressured settlement in a patent dispute.[270]

Athina and *Bro-Tech* may be two of many cases in which denying relief from international parallel litigation has facilitated unfair settlement pressure.[271] Even without further empirical evidence of the connection between foreign antisuit injunction denials and settlement, the case studies above suggest that the restrictive approach's prophylactic comity reflex is

[https://perma.cc/S88H-BVDF] (reporting that Thermax's decision to settle stemmed in part from "the cost and time involved in protracted litigation").

[265] *See, e.g.*, Microsoft Corp. v. Motorola, Inc., 696 F.3d 872, 889 (9th Cir. 2012) ("'At most, there are competing comity concerns, so it cannot fairly be said' that the district court's [foreign antisuit] injunction 'would have an intolerable impact on comity.'" (quoting Applied Med. Dist. Corp. v. Surgical Co. BV, 587 F.3d 909, 921 (9th Cir. 2009))); Kaepa, Inc. v. Achilles Corp., 76 F.3d 624, 627 (5th Cir. 1996) (declining "to require a district court to genuflect before a vague and omnipotent notion of comity every time that it must decide whether to enjoin a foreign action"). *But see* Indus. Mar. Carriers (Bah.), Inc. v. Barwil Agencies A.S., Nos. 03-cv-01668, 03-cv-01908, 2003 WL 22533704, at *4–5 (E.D. La. Nov. 5, 2003) (denying foreign antisuit injunction over movant's argument that its "very survival . . . [was] at stake," and finding that "even if there was an adequate showing that the execution of the Turkish Judgment would cause the [movant's] insolvency . . . , that alone . . . would not tilt the scales in favor of" enjoining it).

[266] No. 16-cv-02787, 2018 WL 1784065 (N.D. Cal. Apr. 13, 2018).

[267] *Id.* at *10–11.

[268] *Id.* at *10 (quoting *Microsoft*, 696 F.3d at 886).

[269] *Id.* at *12.

[270] *Microsoft*, 696 F.3d at 886, 889.

[271] *See supra* Part IV (showing that the settlement rate is significantly higher in cases where courts deny foreign antisuit injunction motions than in cases where courts grant relief from international parallel proceedings).

unfair.[272] Thus, courts should require, in the Seventh Circuit's words, "some indication that the issuance of an injunction really would throw a monkey wrench, however small, into the foreign relations of the United States."[273] Permissive circuits have proven more adept than restrictive circuits at weighing international-comity concerns with an eye toward realism.[274]

As the cases above suggest, litigants in the permissive circuits seem to have greater assurance that the resolution of their dispute will depend on the merits of the case, rather than on their adversaries' capacity to pursue duplicative litigation abroad. Further, the permissive approach may deter litigants from harassing opponents and abusing judicial resources with parallel suits. Again, I do not argue that settlement is bad—only that a higher settlement rate after foreign antisuit injunction denials suggests potential abuse of duplicative litigation to pressure unfair settlements.[275] Disfavoring injunctions in reliance on a blanket international-comity principle drains resources from litigants and courts—both domestic and foreign—and encourages misuse of international parallel proceedings. At the next opportunity, the Supreme Court should adopt the permissive approach. Meanwhile, this study's early evidence of the connection between foreign duplicative litigation and settlement should encourage larger studies of the settlement effect.

CONCLUSION

International parallel proceedings seem to be a powerful vehicle for pressuring opponents into settlement. This empirical study suggests that when courts deny foreign antisuit injunction motions, settlement rates rise significantly—at least in cases with opinions available on Westlaw, Lexis, and in the *Federal Supplement*. Overall, the trend persists across other factors, including case type, amount in controversy, the repetitive or reactive nature of parallel suits, and dispositive motion decisions. Based on observed differences between published and unpublished opinions, I would expect the

---

[272] *See supra* notes 67–80 and accompanying text (arguing that comity is vague, difficult to balance against unrelated policy interests, and awkward to transplant from domestic to international parallel proceedings).

[273] Allendale Mut. Ins. Co. v. Bull Data Sys., Inc., 10 F.3d 425, 431 (7th Cir. 1993).

[274] For example, in *Microsoft*, 696 F.3d at 887 (citing *Allendale Mut. Ins. Co.*, 10 F.3d at 431), the court compared *Applied Med. Dist. Corp. v. Surgical Co.*, 587 F.3d 909, 921 (9th Cir. 2009), with *E. & J. Gallo Winery v. Andina Licores S.A.*, 446 F.3d 984, 994 (9th Cir. 2006), observing that the weight comity deserves is fact-specific—it is greater, for example, where the State Department has expressed foreign relations concerns than it is in an ordinary transnational contract dispute. This approach aligns with the Supreme Court's discussion of comity in *Animal Science Prods., Inc. v. Hebei Welcome Pharm. Co.*, 138 S. Ct. 1865, 1873 (2018). *See supra* note 69.

[275] *Supra* notes 108–128 and accompanying text.

settlement effect to be more extreme in unavailable cases. Yet, larger and more sophisticated studies are necessary to disentangle the potential settlement effect of foreign antisuit injunction denials from the influence of other variables. Although this study lacked information on potentially influential factors, the results urge further research on international parallel proceedings and settlement.

Further, individual case studies show that the restrictive approach to foreign antisuit injunction motions—now dominant in the divided federal circuit courts—overvalues vague and inconsistent notions of international comity at the expense of more concrete interests in efficiency and fairness. Under the restrictive test, waste and inconvenience are certain, and unfair settlement pressure seems easy to inflict. In contrast, the permissive approach is fairer: by tasking the nonmoving party with demonstrating actual comity infringement, permissive courts discourage abuse of foreign duplicative litigation to pressure unfair settlements.

Of course, in some cases, issuing a foreign antisuit injunction may risk offending a foreign nation. But the burden of proving this abstract danger should be on the party opposing the more efficient result. In cases implicating severe foreign relations concerns, those concerns are likely to be apparent. By contrast, distinguishing between legitimate and exploitative foreign duplicative litigation is difficult. Accordingly, the Supreme Court should resolve the circuit split in favor of the permissive approach. In doing so, the Court would limit exploitative litigation in transnational disputes and set a predictable backdrop for fair and efficient settlement negotiation.

APPENDIX: CASES WITH FOREIGN ANTISUIT INJUNCTION DECISION BY FEDERAL DISTRICT COURTS, 2000–2020

This Appendix lists the 128 cases from Westlaw and Lexis that I collected into an original sample and coded. Table A1 provides a complete picture of the information I recorded.[276]

[276] The cases listed in Table A1 are also available online in CSV and XLSX formats, at https://scholarlycommons.law.northwestern.edu/nulr/vol116/iss6/4/.

TABLE A1: CASES

Case	Docket No.	ASI or Stay Granted or Denied	Settlement? And Disposition if No Settlement	Appeal	Motion to Dismiss	Summary Judgment Motion	Foreign Forum(s)
1st Source Bank v. Neto, 2016 WL 7187247 (N.D. Ind. Dec. 12, 2016)	15-cv-00261	ASI denied	No. Summary judgment for plaintiff.	7th Cir. affirmed	None	Granted	Brazil
A.P. Moller-Maersk A/S v. Ocean Express Miami, 590 F. Supp. 2d 526 (S.D.N.Y. 2008)	06-cv-02778	ASI granted	No. Partial summary judgment for plaintiff; voluntary dismissal of remaining claims.	2d Cir. affirmed ASI	Denied	Denied in part	Panama; Guatemala
Abbot Lab'ys v. Qiagen Gaithersburg, Inc., 2010 WL 1539952 (N.D. Ill. Apr. 15, 2010)	10-cv-00712	ASI denied	Yes.	No appeal (7th Cir.)	None	None	Germany
Affymax, Inc. v. Johnson & Johnson, 420 F. Supp. 2d 876 (N.D. Ill. 2006)	04-cv-06216	ASI granted	Yes.	No appeal on ASI (7th Cir.)	Denied	None	Germany
Albemarle Corp. v. AstraZeneca UK Ltd., 2009 WL 10690496 (D.S.C. Sept. 9, 2009)	08-cv-01085	ASI granted; vacated	No. Judgment for defendant.	4th Cir. affirmed	Partial motion granted	Filed; mooted	U.S.
Allied Van Lines, Inc. v. Beamen, 2008 WL 4866052 (N.D. Ill. July 21, 2008)	07-cv-02407	ASI denied; motion to dismiss granted	No. Dismissal for lack of personal jurisdiction.	No appeal (7th Cir.)	Granted	None	Canada
Alstom Chile S.A. v. Mapfre Compania De Seguros Generales Chile S.A., 2013 WL 5863547 (S.D.N.Y. Oct. 31, 2013)	13-cv-02416	ASI granted	No. Judgment for plaintiff, compelling arbitration.	Appeal withdrawn (2d Cir.)	None	None	Chile
Amaprop Ltd. v. Indiabulls Fin. Servs. Ltd., 2010 WL 1050988 (S.D.N.Y. Mar. 23, 2010)	10-cv-01853	ASI granted	No. Judgment for plaintiff, compelling arbitration.	No appeal on ASI (2d Cir.)	None	None	India
Answers in Genesis of Ky., Inc. v. Creation Ministries Int'l, Ltd., 2009 WL 10706843 (E.D. Ky. Mar. 27, 2009)	08-cv-00053	Renewed ASI motion denied	Yes.	Decision on earlier ASI motion affirmed (6th Cir.)	Denied	None	Australia

Filed First (U.S. or Abroad)	Basis of Jurisdiction	Case Type	Amount in Controversy	Citizenship of Plaintiff	Citizenship of Defendant	Party Seeking ASI	Repetitive or Reactive
U.S.	Diversity	Contract	$4,659,644	U.S.	Brazil	Defendant	Repetitive
Panama	Federal question; admiralty and maritime	Contract	$8,415,000	Denmark	U.S.; Guatemala	Plaintiff	Reactive
Germany	Diversity	Contract; arbitration	Unknown (over $75,000)	U.S.; Germany	U.S.	Plaintiff	Reactive
Germany	Federal question	Patent	Unknown	U.S.	U.S.	Defendant	Repetitive
England	Diversity	Contract	Unknown (over $75,000)	U.S.	U.K.	Plaintiff	Reactive
Canada	Federal question	Other; statutory; contract	$78,935	U.S.	Canada	Plaintiff	Reactive
Chile	Federal question	Arbitration	Unknown	Chile; France	Chile	Plaintiff	Reactive
U.S.	Federal question	Arbitration	Unknown	Cayman Islands	India	Plaintiff	Reactive
Australia	Federal question	Contract; arbitration	Unknown	U.S.	Australia	Plaintiff	Reactive

Case	Docket No.	ASI or Stay Granted or Denied	Settlement? And Disposition if No Settlement	Appeal	Motion to Dismiss	Summary Judgment Motion	Foreign Forum(s)
Applied Med. Distrib. Corp. v. Ah Sung Int'l, Inc., 2016 WL 7626488 (C.D. Cal. Sept. 20, 2016)	14-cv-01900	ASI granted	Yes. Default judgment for plaintiff.	No appeal (9th Cir.)	Denied	Partial motion granted in part	South Korea
APR Energy, LLC v. First Inv. Grp., 88 F. Supp. 3d 1300 (M.D. Fla. 2015)	14-cv-00575	ASI granted	No. Judgment for plaintiff.	No appeal on ASI (11th Cir.)	None	None	Libya
Aruba Hotel Enters. N.V. v. Belfonti, 611 F. Supp. 2d 203 (D. Conn. 2009)	07-cv-01297	ASI denied; summary judgment granted	No. Cross-motions for summary judgment granted; judgment for plaintiffs.	No appeal (2d Cir.)	Denied	Granted	Aruba
Athina Invs. Ltd. v. Pinchuk, 443 F. Supp. 2d 177 (D. Mass. 2006)	06-cv-10560	ASI denied	Yes.	No appeal on ASI (1st Cir.)	Granted; vacated	None	Russia
BAE Sys. Tech. Sol. & Servs., Inc. v. Republic of Korea's Def. Acquisition Program Admin., 195 F. Supp. 3d 776 (D. Md. 2016)	14-cv-03551	ASI granted	No. Summary judgment for plaintiff.	4th Cir. dismissed	Denied	Granted	South Korea
Bailey Shipping Ltd. v. Am. Bureau of Shipping, 2013 WL 5312540 (S.D.N.Y. Sept. 23, 2013)	12-cv-05959	ASI granted	No. Judgment for plaintiff, confirming arbitration award.	No appeal (2d Cir.)	None	None	Greece
Banco Intercontinental, S.A. v. Renta, 2005 WL 8168711 (S.D. Fla. Apr. 12, 2005)	04-cv-20727	ASI denied	Yes. Default judgment for plaintiff.	No appeal on ASI (11th Cir.)	Denied	Denied	Dominican Republic
Bank Leumi USA v. Ehrlich, 2015 WL 12591663 (S.D.N.Y. Sept. 23, 2015)	12-cv-04423	ASI granted	No. Summary judgment for plaintiff.	No appeal (2d Cir.)	Denied	Granted	Uruguay
Barnie's Coffee & Tea Co. v. Am. Mattress Co., 2008 WL 191019 (M.D. Fla. Jan. 22, 2008)	07-cv-01664	ASI denied	Yes.	No appeal (11th Cir.)	None	None	Kuwait

Filed First (U.S./ Abroad)	Basis of Jurisdiction	Case Type	Amount in Controversy	Citizenship of Plaintiff	Citizenship of Defendant	Party Seeking ASI	Repetitive or Reactive
U.S.	Diversity	Contract	Unknown (over $75,000)	U.S.	South Korea	Plaintiff	Reactive
U.S.	Federal question	Contract; arbitration	Unknown	U.S.	Libya; St. Vincent; Grenadine	Plaintiff	Reactive
Aruba	Diversity	Contract; commercial	Unknown	Aruba	U.S.	Plaintiff	Reactive
U.S.	Federal question	Other; racketeering	Unknown (over $100 million)	Belize; Cyprus; Israel	Ukraine; Switzerland; U.S.	Plaintiff	Reactive
U.S.	Federal question	Contract	$43.25 million	U.S.	Korea	Plaintiff	Reactive
Greece	Federal question	Arbitration	$168,090	Marshall Islands	U.S.; Greece	Defendant	Repetitive
U.S.	Federal question	Other; racketeering	Unknown (over $176 million)	Dominican Republic	U.S.; Dominican Republic; British Virgin Islands	Plaintiff	Reactive
U.S.	Diversity	Contract	Unknown (over $75,000)	U.S.	Uruguay	Plaintiff	Reactive
Kuwait	Federal question	Trademark; contract	Unknown (over $75,000)	U.S.	Kuwait	Plaintiff	Reactive

Case	Docket No.	ASI or Stay Granted or Denied	Settlement? And Disposition if No Settlement	Appeal	Motion to Dismiss	Summary Judgment Motion	Foreign Forum(s)
Bayco Prods., Inc. v. ProTorch Co., 2020 WL 2574626 (E.D. Tex. May 21, 2020)	19-cv-00648	ASI denied as moot; motion to dismiss and compel arbitration granted	No. Motion to dismiss and compel arbitration granted.	No appeal (5th Cir.)	Granted	None	China
BCB Holdings Ltd. v. Gov't of Belize, 232 F. Supp. 3d 28 (D.D.C. 2017)	14-cv-01123	ASI denied without prejudice; judgment for movant	No. Judgment for plaintiff, confirming arbitration award.	No appeal on ASI (D.C. Cir.)	Denied	Denied	Belize
BlackBerry Ltd. v. Nokia Corp., 2018 WL 5630584 (D. Del. Oct. 31, 2018)	17-cv-00155	ASI denied	Yes.	No appeal (3d Cir.)	Filed; not decided	None	Sweden
Blom, ASA v. Pictometry Int'l Corp., 2011 WL 13210083 (W.D.N.Y. July 19, 2011)	10-cv-06607	ASI denied	Yes.	No appeal (2d Cir.)	None	None	Norway
Broadspire, Inc. v. Momentum Advanced Sols., Inc., 2010 WL 11597280 (C.D. Cal. Feb. 26, 2010)	09-cv-08607	ASI denied	Yes.	No appeal (9th Cir.)	Granted in part; denied in part	None	Canada
Bro-Tech Corp. v. Thermax, Inc., 2007 WL 2597618 (E.D. Pa. Sept. 4, 2007)	05-cv-02330	ASI denied	Yes.	No appeal (3d Cir.)	Denied	Denied	England
C.D.S., Inc. v. Bradley Zetler, CDS, LLC, 213 F. Supp. 3d 620 (S.D.N.Y. 2016)	16-cv-03199	ASI denied	Yes.	No appeal on ASI (2d Cir.)	Partial motion denied	Denied	France
Canon Latin Am. Inc. v. Lantech (CR), S.A., 497 F. Supp. 2d 1370 (S.D. Fla. 2007); Canon Latin Am. Inc. v. Lantech (CR), S.A., 453 F. Supp. 2d 1357 (S.D. Fla. 2006)	05-cv-20297	ASI granted; reversed	No. Final summary judgment for plaintiff.	11th Cir. reversed	Denied	Cross-motions denied in part	Costa Rica
Cascade Yarns, Inc. v. Knitting Fever, Inc., 2014 WL 5312571 (W.D. Wash. Oct. 16, 2014)	10-cv-00861	ASI denied	No. Judgment as a matter of law for plaintiff.	No appeal on ASI (9th Cir.)	Denied in part	Denied in part	Italy; Spain

Filed First (U.S./ Abroad)	Basis of Jurisdiction	Case Type	Amount in Controversy	Citizenship of Plaintiff	Citizenship of Defendant	Party Seeking ASI	Repetitive or Reactive
U.S.	Federal question	Patent; contract	Unknown	U.S.	U.S.; China	Plaintiff	Reactive
Belize	Federal question	Other; arbitration	BZ$ 40,843,272	Belize	Belize	Plaintiff	Reactive
U.S.	Federal question	Patent	Unknown	Canada	Finland	Plaintiff	Reactive
U.S.	Diversity	Contract; arbitration	Unknown	Norway	U.S.	Plaintiff	Reactive
U.S.	Diversity	Contract	$637,939	U.S.	Canada	Plaintiff	Reactive
U.S.	Federal question	Other; statutory; contract	Unknown ($38 million settlement)	U.S.; U.K.	U.S.; India; U.K.	Defendant	Repetitive
U.S.	Federal question	Copyright; trademark; contract; tort	Unknown (over $1,000,000)	U.S.	U.S.; South Africa	Plaintiff	Reactive
Costa Rica	Diversity	Contract	$247,000	U.S.	Costa Rica	Plaintiff	Reactive
U.S.	Federal question	Trademark; RICO; tort	Unknown	U.S.	U.S.; England; Italy	Plaintiff	Reactive

Case	Docket No.	ASI or Stay Granted or Denied	Settlement? And Disposition if No Settlement	Appeal	Motion to Dismiss	Summary Judgment Motion	Foreign Forum(s)
CFTC v. Lake Shore Asset Mgmt. Ltd., 2007 WL 2915647 (N.D. Ill. Oct. 4, 2007)	07-cv-03598	ASI granted through appointment of receiver	No.	No appeal on ASI (7th Cir.)	Filed; not decided	Filed; not decided	England
Citibank, N.A. v. Mazza, 2020 WL 7493080 (S.D. Fla. Feb. 12, 2020)	19-cv-21216	ASI granted; arbitration compelled	No. Arbitration compelled.	No appeal (11th Cir.)	Denied	None	Argentina
Commercializadora Portimex, S.A. de CV v. Zen-Noh Grain Corp., 373 F. Supp. 2d 645 (E.D. La. 2005)	02-cv-01185	ASI granted	No. Judgment for defendant.	No appeal (5th Cir.)	None	Partial motion granted	Mexico
Comverse, Inc. v. Am. Telecomms., Inc., 2006 WL 3016315 (S.D.N.Y. Oct. 23, 2006)	06-cv-06825	ASI denied	Yes.	No appeal (2d Cir.)	None	None	Chile
Cont'l Cas. Co. v. AXA Glob. Risks Ltd., 2010 WL 1268038 (W.D. Mo. Apr. 2, 2010)	09-cv-00335	ASI denied; stay denied	Yes.	No appeal on ASI (8th Cir.)	Denied	Filed; not decided	England
Custom Polymers PET v. Gamma Meccanica SpA, 185 F. Supp. 3d 741 (D.S.C. 2016)	15-cv-04882	ASI granted	Yes.	4th Cir. dismissed	None	None	Italy
Cybernaut Cap. Mgmt. Ltd. v. Partners Grp. Access Secondary 2008, L.P., 2013 WL 4413754 (S.D.N.Y. Aug. 7, 2013)	13-cv-05380	ASI denied	No. Judgment for defendant.	Appeal withdrawn (2d Cir.)	None	None	Cayman Islands
Dandong v. Pinnacle Performance Ltd., 2011 WL 6156743 (S.D.N.Y. Dec. 12, 2011)	10-cv-08086	ASI granted	Yes.	2d Cir. affirmed ASI	Granted in part; denied in part	None	Singapore
David Benrimon Fine Art LLC v. Durazzo, 2017 WL 4857603 (S.D.N.Y. Oct. 26, 2017)	17-cv-06382	ASI denied	Yes.	No appeal (2d Cir.)	None	None	France

Filed First (U.S./ Abroad)	Basis of Jurisdiction	Case Type	Amount in Controversy	Citizenship of Plaintiff	Citizenship of Defendant	Party Seeking ASI	Repetitive or Reactive
U.S.	Federal question	Other; statutory	$130,000	U.S.	U.S.	Plaintiff	Reactive
U.S.	Federal question	Other; employment; arbitration	Unknown	U.S.; Argentina	Argentina	Plaintiff	Reactive
U.S.	Diversity	Contract	$4,000,000	Mexico	U.S.	Defendant	Repetitive
U.S.	Diversity	Contract; arbitration	Unknown (over $75,000)	U.S.	Chile	Plaintiff	Reactive
England	Diversity	Contract; insurance	$23 million	U.S.	England; Italy	Plaintiff	Reactive
Italy	Diversity	Contract	Unknown (over $75,000)	U.S.	Italy	Plaintiff	Reactive
Cayman Islands	Federal question	Arbitration	Unknown	Cayman Islands	U.S.; Scotland; Guernsey; Luxembourg	Plaintiff	Reactive
U.S.	Diversity	Securities; tort; contract; class action	Unknown	Singapore	Cayman Islands; Singapore; England; Wales	Plaintiff	Reactive
France	Diversity	Contract	$347,500	U.S.	France	Plaintiff	Reactive

Case	Docket No.	ASI or Stay Granted or Denied	Settlement? And Disposition if No Settlement	Appeal	Motion to Dismiss	Summary Judgment Motion	Foreign Forum(s)
Deutsche Mex. Holdings S.a.r.l. v. Accendo Banco, S.A., 2019 WL 5257995 (S.D.N.Y. Oct. 17, 2019)	19-cv-08692	ASI granted	No. Judgment for plaintiff, compelling arbitration.	No appeal (2d Cir.)	None	None	Mexico
Dow Jones & Co. v. Harrods, Ltd., 237 F. Supp. 2d 394 (S.D.N.Y. 2002)	02-cv-03979	ASI denied; motion to dismiss granted	No. Dismissal for lack of personal and subject matter jurisdiction.	2d Cir. affirmed	Granted	None	U.K.
Dr. Byte USA, LLC v. Storex Indus. Corp., 2008 WL 11333115 (S.D. Fla. Feb. 21, 2008)	07-cv-80379	ASI denied	No. Motion to compel arbitration denied.	No appeal (11th Cir.)	None	None	Canada
E. & J. Gallo Winery v. Andina Licores S.A., 2005 WL 1554001 (E.D. Cal. June 24, 2005)	05-cv-00101	ASI denied; reversed	Yes.	9th Cir. reversed	Denied	Denied in part	Ecuador
E. I. duPont de Nemours & Co. v. Agfa NV, 2018 WL 7283319 (E.D. Va. Oct. 30, 2018)	18-cv-00326	ASI denied	Yes.	No appeal (4th Cir.)	Granted in part	None	Germany
Eastman Kodak Co. v. Asia Optical Co., 118 F. Supp. 3d 581 (S.D.N.Y. 2015)	11-cv-00636	ASI granted	Yes. Judgment for plaintiff; voluntary dismissal of appeal.	Appeal on ASI withdrawn (2d Cir.)	Denied; motion to dismiss third-party complaint granted	Partial motion granted	China
ED Cap. LLC v. Bloomfield Inv. Res. Corp., 155 F. Supp. 3d 434 (S.D.N.Y. 2016)	15-cv-09056	ASI denied	No. Dismissal for failure to state a claim.	No appeal on ASI (2d Cir.)	Granted	None	Netherlands
eLandia Int'l, Inc. v. Koy, 2009 WL 10667894 (S.D. Fla. Aug. 24, 2009)	09-cv-20588	ASI denied	Yes.	No appeal (11th Cir.)	Denied	Granted in part; denied in part	Fiji
Empresa Generadora de Electricidad Itabo, S.A. v. Corporación Dominica de Empresas Eléctricas Estatales, 2005 WL 1705080 (S.D.N.Y. July 18, 2005)	05-cv-05004	ASI denied	Yes. Appeal withdrawn; stipulated dismissal.	Appeal withdrawn (2d Cir.)	None	None	Dominican Republic

Filed First (U.S./ Abroad)	Basis of Jurisdiction	Case Type	Amount in Controversy	Citizenship of Plaintiff	Citizenship of Defendant	Party Seeking ASI	Repetitive or Reactive
Mexico	Federal question	Arbitration; contract	Unknown	Mexico; Germany	Mexico	Plaintiff	Reactive
U.K.	Federal question	Tort	Unknown	U.S.	U.K.	Plaintiff	Reactive
U.S.	Diversity	Arbitration; contract	Unknown (over $75,000)	U.S.	Canada	Plaintiff	Reactive
Ecuador	Diversity	Contract	Unknown (over $217,000)	U.S.	Ecuador	Plaintiff	Reactive
Germany	Federal question	Patent	Unknown	U.S.	Belgium	Plaintiff	Reactive
U.S.	Federal question	Contract	Unknown (over $75,000)	U.S.	Taiwan	Plaintiff	Reactive
Netherlands	Diversity	Contract	Unknown (over $75,000)	U.S.	British Virgin Islands; Bermuda	Plaintiff	Reactive
Fiji	Diversity	Contract	$7,500,000	U.S.	U.S.; Fiji; New Zealand; Canada	Plaintiff	Reactive
Dominican Republic	Federal question	Arbitration	Unknown	Dominican Republic	Dominican Republic	Plaintiff	Reactive

Case	Docket No.	ASI or Stay Granted or Denied	Settlement? And Disposition if No Settlement	Appeal	Motion to Dismiss	Summary Judgment Motion	Foreign Forum(s)
En Pointe Techs. Sales, LLC v. Ovex Techs. (Priv.) Ltd., 2017 WL 10057506 (C.D. Cal. Sept. 8, 2017)	17-cv-04362	ASI granted	No. Judgment for plaintiff, compelling arbitration.	No appeal (9th Cir.)	None	None	Pakistan
Escalo v. Steiner Transocean, Ltd., 2015 WL 12533114 (S.D. Fla. Dec. 15, 2015)	13-cv-21065	ASI denied	Yes.	No appeal (11th Cir.)	Denied	Denied	Philippines
Fellowes, Inc. v. Changzhou Xinrui Fellowes Off. Equip. Co., 2012 WL 3544841 (N.D. Ill. Aug. 16, 2012)	11-cv-06289	ASI granted; vacated	No. Dismissal for lack of subject matter jurisdiction.	7th Cir. vacated	None	None	China
Fisher & Co., Inc. v. Fine Blanking & Tool Co., 2019 WL 5853539 (E.D. Mich. Nov. 8, 2019)	19-cv-10665	ASI denied	Yes.	No appeal (6th Cir.)	None	None	Taiwan
Gen. Elec. Co. v. Deutz AG, 129 F. Supp. 2d 776 (W.D. Pa. 2000)	98-cv-00370	ASI granted; reversed	Yes.	3d Cir. reversed	Denied	None	London
Gilbane Fed. v. United Infrastructure Projects FZCO, 2014 WL 4950011 (N.D. Cal. Sept. 24, 2014)	14-cv-03254	ASI granted	No. Judgment for plaintiff.	No appeal on ASI (9th Cir.)	None	Partial motion granted in part; denied in part	Lebanon
Goss Int'l Corp. v. Tokyo Kikai Seisakusho, Ltd., 2007 WL 2301266 (N.D. Iowa Aug. 8, 2007); Goss Int'l Corp. v. Tokyo Kikai Seisakusho, Ltd., 435 F. Supp. 2d 919 (N.D. Iowa 2006)	00-cv-00035	ASI granted; reversed	No. Preliminary injunction vacated; dismissal for mootness.	8th Cir. reversed	Denied	Denied	Japan
Grynberg v. BP P.L.C., 643 F. Supp. 2d 1 (D.D.C. 2009)	08-cv-00301	ASI denied	No. Dismissal pursuant to arbitration.	No appeal on ASI (D.C. Cir.)	Granted	None	Canada
Hans Vlessing Int'l Textile Agencies, Inc. v. Daewoo Int'l Corp., 2008 WL 114707367 (N.D. Ga. Apr. 24, 2008)	07-cv-02421	ASI granted	Yes.	No appeal on ASI (11th Cir.)	Denied	None	South Korea

Filed First (U.S./ Abroad)	Basis of Jurisdiction	Case Type	Amount in Controversy	Citizenship of Plaintiff	Citizenship of Defendant	Party Seeking ASI	Repetitive or Reactive
Pakistan	Federal question	Contract; arbitration	Unknown	U.S.	Pakistan	Plaintiff	Reactive
U.S.	Diversity	Tort; contract; employment; statutory	Unknown (over $75,000)	Unknown	U.S.	Plaintiff	Reactive
China	Diversity	Contract	$100 million	U.S.	China	Plaintiff	Reactive
U.S.	Diversity	Contract	Unknown (over $75,000)	U.S.	Taiwan	Plaintiff	Reactive
U.S.	Diversity	Contract	$80 million	U.S.	Germany	Plaintiff	Reactive
U.S.	Diversity	Contract	$7 million	U.S.	United Arab Emirates	Plaintiff	Reactive
U.S.	Federal question	Other; statutory	Unknown (over $30 million)	U.S.	Japan; U.S.	Plaintiff	Reactive
U.S.	Federal question	Other; racketeering	$6,075,000	U.S.	U.S.; Norway; England; U.K.	Plaintiff	Reactive
U.S.	Diversity	Contract	$750,000	U.S.	South Korea	Plaintiff	Reactive

Case	Docket No.	ASI or Stay Granted or Denied	Settlement? And Disposition if No Settlement	Appeal	Motion to Dismiss	Summary Judgment Motion	Foreign Forum(s)
Hapag-Lloyd Aktiengesellschaft v. U.S. Oil Trading L.L.C., 2016 WL 5369617 (S.D.N.Y. May 6, 2016)	14-cv-09949	ASI granted	Yes.	2d Cir. remanded; district court reaffirmed ASI	None	Denied	Various (ASI sought against all foreign actions)
H-D Mich., LLC v. Hellenic Duty Free Shops S.A., 2012 WL 404895 (E.D. Wis. Feb. 7, 2012)	11-cv-00742	ASI granted	Yes.	7th Cir. affirmed	None	None	Greece
Home Healthcare Affiliates of Miss., Inc. v. N. Am. Indem. N.V., 2003 WL 22244382 (N.D. Miss. Aug. 7, 2003)	01-cv-00489	ASI granted	Yes.	No appeal on ASI (5th Cir.)	Denied	Denied in part	Belgium
Huawei Techs., Co. v. Samsung Elecs. Co., 2018 WL 1784065 (N.D. Cal. Apr. 13, 2018)	16-cv-02787	ASI granted	Yes.	No appeal on ASI (9th Cir.)	Denied	Filed; not decided	China
Ibeto Petrochemical Indus., Ltd. v. M/T "Beffen," 412 F. Supp. 2d 285 (S.D.N.Y. Nov. 21, 2005)	05-cv-02590	ASI granted; stayed in favor of foreign arbitration	Yes.	2d Cir. affirmed in part	Denied	Filed; not decided	Nigeria; England
ICBC Standard Sec., Inc. v. Luzuriaga, 217 F. Supp. 3d 733 (S.D.N.Y. 2016)	15-cv-05267	ASI denied; dismissed in favor of foreign proceeding	No. Dismissal, abstaining in favor of foreign litigation.	No appeal (2d Cir.)	Granted	None	Argentina
Ilyia v. El Khoury, 2014 WL 12683678 (W.D. Wash. May 16, 2014)	11-cv-01593	ASI granted	No. Jury verdict for defendant.	No appeal on ASI (9th Cir.)	Denied	Denied	Lebanon
In re Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, 465 F. Supp. 2d 283 (S.D.N.Y. 2006)	21-mc-00098	ASI granted	No. Judgment for plaintiff.	2d Cir. affirmed	Motion to dismiss appeal denied	None	Cayman Islands
In re Lernout & Hauspie Sec. Litig., 2003 WL 22964378 (D. Mass. Dec. 12, 2003)	00-cv-11589	ASI granted	Yes.	1st Cir. affirmed	Denied	None	Belgium

Filed First (U.S./ Abroad)	Basis of Jurisdiction	Case Type	Amount in Controversy	Citizenship of Plaintiff	Citizenship of Defendant	Party Seeking ASI	Repetitive or Reactive
U.S.	Federal question; admiralty and maritime	Contract	Unknown	Germany	U.S.	Plaintiff	Reactive
U.S.	Diversity	Contract	Unknown (over $75,000)	U.S.	Greece	Plaintiff	Reactive
U.S.	Diversity	Contract; insurance	$300,000	U.S.	Belgium; U.S.	Plaintiff	Reactive
U.S.	Federal question	Patent	Unknown	China; U.S.	South Korea; U.S.	Defendant	Repetitive
Nigeria	Federal question; admiralty and maritime	Contract; Shipping	$2,000,000	Nigeria	Norway	Defendant	Repetitive
Argentina	Diversity	Contract	Unknown (over $75,000)	U.S.	Argentina	Plaintiff	Reactive
U.S.	Diversity	Contract	Unknown (over $75,000)	U.S.	U.S.; Lebanon	Defendant	Repetitive
U.S.	Federal question	Other; arbitration; statutory	$260 million	Cayman Islands	Indonesia	Plaintiff	Reactive
U.S.	Federal question	Other; securities	Unknown (at least $5,270,000)	Various	Belgium; U.S.	Plaintiff	Reactive

Case	Docket No.	ASI or Stay Granted or Denied	Settlement? And Disposition if No Settlement	Appeal	Motion to Dismiss	Summary Judgment Motion	Foreign Forum(s)
In re Vivendi Universal, S.A. Sec. Litig., 2009 WL 3859066 (S.D.N.Y. Nov. 19, 2009)	02-cv-05571	ASI denied	Yes.	No appeal on ASI (2d Cir.)	Denied in part	Denied	France
Indus. Mar. Carriers (Bah.), Inc. v. Barwil Agencies A.S., 2003 WL 22533704 (E.D. La. Nov. 5, 2003)	03-cv-01688	ASI denied	Yes.	No appeal (5th Cir.)	Denied	Denied	Turkey
Interdigital Tech. Co. v. Pegatron Corp., 2015 WL 3958257 (N.D. Cal. June 29, 2015)	15-cv-02584	ASI granted	No. Judgment for plaintiff, compelling arbitration.	No appeal (9th Cir.)	None	None	Taiwan
Int'l Equity Invs., Inc. v. Opportunity Equity Partners, 441 F. Supp. 2d 552 (S.D.N.Y. 2006)	05-cv-02745	ASI granted	Yes.	2d Cir. affirmed	Denied	None	Brazil
Int'l Safety Access Corp. v. Integrity Worldwide, Inc., 2009 WL 10684864 (D.S.C. May 27, 2009)	09-cv-00315	ASI granted	No. Judgment for defendant.	No appeal (4th Cir.)	Denied	Partial motion granted	Canada
Investcom Consortium Holding SA v. Wilmot, 2009 WL 958725 (S.D. Tex. Apr. 3, 2009)	08-cv-02786	ASI denied	Yes.	5th Cir. dismissed	Denied	None	Ghana
Jolen, Inc. v. Kundan Rice Mills, Ltd., 2019 WL 1559173 (S.D.N.Y. Apr. 9, 2019)	19-cv-01296	ASI granted	No. Judgment for plaintiff, confirming arbitration award.	No appeal (2d Cir.)	None	None	India
Juniper Networks, Inc. v. Bahattab, 2011 WL 13262819 (D.D.C. May 25, 2011)	07-cv-01771	ASI denied	Yes.	No appeal (D.C. Cir.)	Denied	Granted in part	United Arab Emirates
Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, 264 F. Supp. 2d 470 (S.D. Tex. Apr. 26, 2002)	01-cv-00634	ASI granted; reversed	No. Summary judgment for plaintiff, confirming arbitration award.	5th Cir. reversed	Partial motion granted	Granted	Various (ASI sought against Indonesian action)
Keep on Kicking Music, Ltd. v. Hibbert, 268 F. Supp. 3d 585 (S.D.N.Y. 2017)	15-cv-07464	ASI granted	Yes.	No appeal (2d Cir.)	Granted in part	None	Jamaica

Filed First (U.S./ Abroad)	Basis of Jurisdiction	Case Type	Amount in Controversy	Citizenship of Plaintiff	Citizenship of Defendant	Party Seeking ASI	Repetitive or Reactive
U.S.	Federal question	Other; securities	$49.7 million	U.S.; France; England; Netherlands	France	Plaintiff	Reactive
Turkey	Federal question; admiralty and maritime	Contract	$3,000,000	Bahamas	South Korea	Plaintiff	Reactive
Taiwan	Diversity	Contract; arbitration	Unknown (over $75,000)	U.S.	Taiwan	Plaintiff	Reactive
Brazil	Diversity	Contract	Unknown (over $300 million)	U.S.; Cayman Islands	Cayman Islands; Brazil	Plaintiff	Repetitive
U.S.	Diversity	Contract	Unknown (over $75,000)	U.S.	Canada	Plaintiff	Reactive
Ghana	Federal question	Other; arbitration; shareholder dispute	Unknown (over $75,000)	British Virgin Islands; Lebanon; Ghana	U.S.	Plaintiff	Reactive
U.S.	Diversity	Other; arbitration	Unknown (over $75,000)	U.S.	India	Plaintiff	Reactive
United Arab Emirates	Federal question	Patent	Unknown	U.S.	Saudi Arabia	Plaintiff	Reactive
Switzerland	Federal question	Arbitration; contract	$261 million	Cayman Islands	Indonesia	Plaintiff	Reactive
U.S.	Federal question	Other; contract	Unknown	U.K.	Jamaica	Plaintiff	Reactive

Case	Docket No.	ASI or Stay Granted or Denied	Settlement? And Disposition if No Settlement	Appeal	Motion to Dismiss	Summary Judgment Motion	Foreign Forum(s)
Lite On It Corp v. Toshiba Corp., 2009 WL 10673953 (C.D. Cal. Jan. 12, 2009)	07-cv-04758	ASI denied	Yes.	No appeal (9th Cir.)	None	Denied	Taiwan
Lockheed Martin Corp. v. Aceworld Holdings PTY Ltd., 2019 WL 3767553 (N.D. Cal. Aug. 9, 2019)	19-cv-04074	ASI granted	Yes.	9th Cir. dismissed	None	None	Australia
MacDermid Offshore Sols., LLC v. Niche Prods., LLC, 2013 WL 3980870 (S.D. Tex. Aug. 2, 2013)	12-cv-02483	ASI granted	Yes.	No appeal on ASI (5th Cir.)	Denied	None	England
Macneil Auto. Prods., Ltd. v. Cannon Auto. Ltd., 2013 WL 12155279 (N.D. Ill. Feb. 4, 2013)	08-cv-00139	ASI granted	No. Jury verdict for plaintiff.	7th Cir. affirmed	Denied	Denied	England
MacPhail v. Oceaneering Int'l, Inc., 186 F. Supp. 2d 704 (S.D. Tex. 2002)	01-cv-00266	ASI granted; reversed	Yes.	5th Cir. reversed	Denied	None	Australia
Maroc Fruit Bd. S.A. v. M/V Almeda Star, 961 F. Supp. 2d 362 (D. Mass. 2013)	11-cv-12091	ASI denied	Yes.	No appeal (1st Cir.)	None	None	England
MasterCard Int'l Inc. v. Argencard Sociedad Anonima, 2002 WL 432379 (S.D.N.Y. Mar. 20, 2002)	01-cv-03027	ASI denied	Yes.	No appeal (2d Cir.)	Denied	Filed; not decided	Argentina
MasterCard Int'l Inc. v. Fédération Internationale de Football Ass'n, 2007 WL 631312 (S.D.N.Y. Feb. 28, 2007)	06-cv-03036	ASI granted	Yes.	No appeal on ASI (2d Cir.)	Denied	None	Switzerland
Mastronardi Int'l Ltd. v. SunSelect Produce (Cal.), Inc., 437 F. Supp. 3d 772 (E.D. Cal. 2020)	18-cv-00737	ASI denied	Yes.	No appeal (9th Cir.)	Denied	None	Canada

Filed First (U.S./ Abroad)	Basis of Jurisdiction	Case Type	Amount in Controversy	Citizenship of Plaintiff	Citizenship of Defendant	Party Seeking ASI	Repetitive or Reactive
U.S.	Diversity	Contract; arbitration	Unknown (over $75,000)	Taiwan; U.S.	Japan	Plaintiff	Reactive
U.S.	Diversity	Contract	Unknown (over $75,000)	U.S.	Australia	Plaintiff	Reactive
U.S.	Federal question	Intellectual property	Unknown	U.S.	U.S.; England	Plaintiff	Reactive
U.S.	Diversity	Contract	$28 million	U.S.	England	Plaintiff	Reactive
U.S.	Federal question; admiralty and maritime	Tort	Unknown	New Zealand	U.S.	Plaintiff	Reactive
U.S.	Federal question	Contract	$1,250,000	Morocco	Poland	Plaintiff	Reactive
Argentina	Diversity	Contract	Unknown	U.S.	Argentina	Plaintiff	Reactive
U.S.	Diversity	Contract	$180 million	U.S.	Switzerland	Plaintiff	Reactive
U.S.	Federal question	Other; statutory; contract	$400,000	U.S.	U.S.	Plaintiff	Reactive

Case	Docket No.	ASI or Stay Granted or Denied	Settlement? And Disposition if No Settlement	Appeal	Motion to Dismiss	Summary Judgment Motion	Foreign Forum(s)
Microsoft Corp. v. Lindows.com, Inc., 319 F. Supp. 2d 1219 (W.D. Wash. 2004)	01-cv-02115	ASI denied	Yes.	No appeal (9th Cir.)	Filed; not decided (withdrawn)	Denied	Finland; France; Sweden; Netherlands; Canada; Mexico; Spain; EU
Microsoft Corp. v. Motorola, Inc., 871 F. Supp. 2d 1089 (W.D. Wash. 2012)	10-cv-01823	ASI granted	No. Jury verdict for plaintiff.	9th Cir. affirmed	Denied in part	Denied in part; motion for judgment on pleadings denied	Germany
Midmark Corp. v. Janak Healthcare Priv. Ltd, 2014 WL 2737996 (S.D. Ohio June 17, 2014)	14-cv-00088	ASI granted	No. Judgment for plaintiff, compelling arbitration.	No appeal (6th Cir.)	Denied	None	India
Motorola Credit Corp. v. Uzan, 2003 WL 56998 (S.D.N.Y. Jan. 7, 2003)	02-cv-00666	ASI granted	No. Judgment for plaintiffs.	No appeal on ASI (2d Cir.)	Denied	None	Turkey
Murphy Oil USA, Inc. v. SR Int'l Bus. Ins., 2007 WL 2752366 (W.D. Ark. Sept. 20, 2007)	07-cv-01071	ASI denied	No. Dismissal pursuant to English court's ASI.	No appeal (8th Cir.)	Filed; not decided	None	England
Nike, Inc. v. Cardarelli, 2015 WL 853008 (D. Or. Feb. 26, 2015)	14-cv-01690	ASI denied	Yes.	No appeal (9th Cir.)	Filed; not decided	Filed; not decided	Italy
Ocean World Lines, Inc. v. Transocean Shipping Transportagentur GesmbH, 2020 WL 3250734 (S.D.N.Y. June 16, 2020)	19-cv-00043	ASI denied; judgment for movant	No. Judgment for plaintiff, confirming arbitration award.	No appeal (2d Cir.)	None	None	Austria
Optis Wireless Tech., LLC v. Huawei Techs. Co., 2018 U.S. Dist. LEXIS 81561 (E.D. Tex. Apr. 24, 2018)	17-cv-00123	ASI denied	Yes.	No appeal (5th Cir.)	Partial motion granted	Partial motion denied	China
Oracle Am., Inc. v. Myriad Grp. AG, 2012 WL 146364 (N.D. Cal. Jan. 17, 2012)	10-cv-05604	ASI granted	Yes.	No appeal on ASI (9th Cir.)	Denied	None	England

Filed First (U.S./ Abroad)	Basis of Jurisdiction	Case Type	Amount in Controversy	Citizenship of Plaintiff	Citizenship of Defendant	Party Seeking ASI	Repetitive or Reactive
U.S.	Federal question	Trademark	Unknown (settled for $20 million)	U.S.	U.S.	Defendant	Repetitive
U.S.	Diversity	Patent	Unknown (jury awarded over $11 million)	U.S.	U.S.	Plaintiff	Reactive
India	Federal question	Other; commercial; arbitration	Unknown	U.S.	India	Defendant	Repetitive
U.S.	Federal question	Other; racketeering	Unknown (over $6.9 billion)	U.S.; Finland	Turkey	Plaintiff	Reactive
England	Diversity	Contract	Unknown (over $75,000)	U.S.	Bermuda; Germany	Plaintiff	Reactive
Italy	Diversity	Contract; employment	Unknown (over $75,000)	U.S.	Italy	Plaintiff	Reactive
U.S.	Federal question	Other; arbitration	$140,000	U.S.	Austria	Plaintiff	Reactive
China	Federal question	Patent	Unknown	U.S.	China; U.S.	Plaintiff	Reactive
U.S.	Federal question	Trademark; copyright; contract	Over $75,000	U.S.	U.S.; Switzerland	Plaintiff	Reactive

Case	Docket No.	ASI or Stay Granted or Denied	Settlement? And Disposition if No Settlement	Appeal	Motion to Dismiss	Summary Judgment Motion	Foreign Forum(s)
Paramedics Electromedicina Comercial Ltda. v. GE Med. Sys. Info. Techs., Inc., 2003 WL 23641529 (S.D.N.Y. June 4, 2003)	02-cv-09369	ASI granted	No. Judgment for defendant.	2d Cir. affirmed	None	None	Brazil
Parasoft Corp. v. Parasoft S.A., 2015 WL 12645754 (C.D. Cal. Feb. 19, 2015)	14-cv-09166	ASI granted	Yes. Default judgment for plaintiff.	No appeal (9th Cir.)	None	None	France
Penson Fin. Servs., Inc. v. MISR Sec. Int'l, 2008 WL 11349751 (N.D. Tex. May 20, 2008); Penson Fin. Servs., Inc. v. MISR Sec. Int'l, 2007 WL 4322150 (N.D. Tex. Dec. 10, 2007)	07-cv-00372	ASI granted	No. Judgment for plaintiff, confirming arbitration award.	No appeal (5th Cir.)	None	None	Egypt
Po-Hai Tang v. CS Clean Sys. AG, 2011 WL 4073653 (S.D. Cal. Sept. 13, 2011)	11-cv-00212	ASI denied	Yes.	No appeal (9th Cir.)	Joint motion to dismiss granted (settlement)	None	Germany
Rain Forest Adventures (Holdings) Ltd. v. AIG Ins. Hong Kong Ltd., 2020 WL 1288573 (S.D. Fla. Mar. 18, 2020)	19-cv-23698	ASI granted	Yes. Motion to dismiss and compel arbitration granted.	Appeal voluntarily dismissed (11th Cir.)	Granted in part	None	Hong Kong
Rancho Holdings, LLC v. Manzanillo Assocs., 2013 WL 6055223 (W.D. Mo. Nov. 14, 2013)	10-cv-00997	ASI granted	No. Summary judgment for plaintiff; ASI granted later.	No appeal on ASI (8th Cir.)	None	Granted	Costa Rica
Rosenbloom v. Barclays Bank PLC, 2014 WL 2726136 (N.D. Ill. June 16, 2014)	13-cv-04087	ASI denied	Yes.	No appeal (7th Cir.)	Filed; not decided	None	England
Seaton Ins. v. Cavell USA, Inc., 2008 WL 8943879 (S.D.N.Y. May 14, 2008)	07-cv-07032	ASI denied as moot; motion to dismiss granted	No. Dismissal in favor of foreign proceedings.	Appeal withdrawn (2d Cir.)	Granted	None	England

Filed First (U.S./ Abroad)	Basis of Jurisdiction	Case Type	Amount in Controversy	Citizenship of Plaintiff	Citizenship of Defendant	Party Seeking ASI	Repetitive or Reactive
U.S.	Federal question	Arbitration; contract	$1,159,129	Brazil	U.S.	Defendant	Repetitive
France	Diversity	Contract	$617,000	U.S.	France	Plaintiff	Reactive
U.S.	Diversity	Contract	$754,000	U.S.	Egypt	Plaintiff	Reactive
U.S.	Diversity	Other; contract; tort	$6,000,000	U.S.	Germany	Plaintiff	Reactive
Hong Kong	Diversity	Tort; insurance	Unknown	U.S.; Saint Lucia	Hong Kong	Plaintiff	Reactive
U.S.	Diversity	Contract	$750,000	U.S.	U.S.	Plaintiff	Reactive
U.S.	Diversity	Contract	Unknown	U.S.	England	Plaintiff	Reactive
U.S.	Diversity	Contract; insurance	$27 million	U.S.	U.S.; U.K.	Plaintiff	Reactive

Case	Docket No.	ASI or Stay Granted or Denied	Settlement? And Disposition if No Settlement	Appeal	Motion to Dismiss	Summary Judgment Motion	Foreign Forum(s)
SEC v. Pension Fund of Am., L.C., 613 F. Supp. 2d 1341 (S.D. Fla. 2009)	05-cv-20863	ASI granted	Yes.	No appeal on ASI (11th Cir.)	Filed; not decided	Partial motion granted	Costa Rica
Sector Navigation Co. v. M/V Captain P, 2007 WL 854311 (E.D. La. Mar. 15, 2007)	06-cv-01788	ASI denied	Yes.	No appeal (5th Cir.)	Denied	None	Nigeria
Seven Arts Filmed Ent. Ltd. v. Content Media Corp., 2011 WL 13220422 (C.D. Cal. Oct. 27, 2011)	11-cv-04603	ASI denied; judgment for movant	No. Dismissal as time barred.	No appeal on ASI (9th Cir.)	Granted	None	England
SG Avipro Fin. Ltd. v. Cameroon Airlines, 2005 WL 1353955 (S.D.N.Y. June 8, 2005)	05-cv-00655	ASI granted	No. Judgment for plaintiff, compelling arbitration.	No appeal (2d Cir.)	Denied	Denied	Cameroon
Sindhi v. Raina, 2018 WL 1964198 (N.D. Tex. Apr. 26, 2018)	15-cv-03229	ASI granted	No. Disputed default judgment for plaintiff.	No appeal on ASI (5th Cir.)	Stricken	None	India
Skidmore Energy, Inc. v. KPMG, 2004 WL 2804888 (N.D. Tex. Dec. 3, 2004)	03-cv-02138	ASI denied	No. Dismissal for lack of personal and subject matter jurisdiction and failure to state a claim.	No appeal on ASI (5th Cir.)	Granted	None	Morocco
Software AG, Inc. v. Consist Software Sols., Inc., 2008 WL 563449 (S.D.N.Y. Feb. 21, 2008)	08-cv-00389	ASI granted	No. Judgment for plaintiff.	2d Cir. affirmed	Denied	None	Brazil
Sonera Holdings B.V. v. Çukorova Holdings A.Ş., 2013 WL 2050914 (S.D.N.Y. May 15, 2013)	11-cv-08909	ASI granted; vacated; motion to dismiss granted	No. Dismissal for lack of personal jurisdiction.	2d Cir. vacated	Granted	None	British Virgin Islands
Sony Corp. v. Fujifilm Holdings Corp., 2017 WL 432126 (S.D.N.Y. Sept. 28, 2017)	16-cv-05988	ASI denied	Yes.	No appeal (2d Cir.)	None	None	Japan

Filed First (U.S./ Abroad)	Basis of Jurisdiction	Case Type	Amount in Controversy	Citizenship of Plaintiff	Citizenship of Defendant	Party Seeking ASI	Repetitive or Reactive
U.S.	Federal question	Other; securities	$8,030,000	U.S.	U.S.; Cayman Islands	Defendant	Reactive
Nigeria	Federal question; admiralty and maritime	Tort; property	$3,500,000	Unknown (non-U.S.)	Unknown	Plaintiff	Reactive
U.S.	Federal question	Copyright	$20 million	England; Wales	England; Wales; U.S.; Canada	Plaintiff	Reactive
Cameroon	Federal question	Arbitration; contract	Unknown	British Virgin Islands; Singapore	Cameroon	Plaintiff	Reactive
U.S.	Federal question	Copyright	Unknown	U.S.	India	Plaintiff	Reactive
Morocco	Federal question	Other; antitrust; racketeering	$3 billion	U.S.	Switzerland; Netherlands; Morocco; U.S.; Saudi Arabia; Principality of Liechtenstein; Sudan; England	Plaintiff	Reactive
U.S.	Federal question	Trademark	Unknown (over $75,000)	U.S.; Germany	U.S.; Brazil	Plaintiff	Reactive
U.S.	Diversity	Arbitration	$932 million	Netherlands	Turkey	Plaintiff	Reactive
Japan	Federal question	Patent; contract	Unknown	Japan; U.S.	Japan; U.S.	Plaintiff	Reactive

Case	Docket No.	ASI or Stay Granted or Denied	Settlement? And Disposition if No Settlement	Appeal	Motion to Dismiss	Summary Judgment Motion	Foreign Forum(s)
Stolt Tankers BV v. Allianz Seguros, S.A., 2011 WL 2436662 (S.D.N.Y. June 16, 2011)	11-cv-02331	ASI granted	No. Judgment for plaintiff, compelling arbitration.	Appeal withdrawn (2d Cir.)	None	None	Brazil
Storm LLC v. Telenor Mobile Comms. AS, 2006 WL 3735657 (S.D.N.Y. Dec. 15, 2006)	06-cv-13157	ASI granted	No. Judgment for defendant, compelling arbitration.	No appeal on ASI (2d Cir.)	None	None	Ukraine
Suchodolski Assocs., Inc. v. Cardell Fin. Corp., 2006 WL 3327625 (S.D.N.Y. Nov. 16, 2006); Suchodolski Assocs., Inc. v. Cardell Fin. Corp., 2006 WL 10886 (S.D.N.Y. Jan. 3, 2006)	03-cv-04148	ASI granted	No. Judgment for defendant.	2d Cir. affirmed	None	None	Brazil
SynCardia Sys., Inc. v. MEDOS Medizintechnik, A.G., 2008 WL 11339957 (D. Ariz. Jan. 28, 2008)	06-cv-00515	ASI denied	Yes.	No appeal (9th Cir.)	None	None	Germany
Tahaya Misr Inv., Inc. v. Helwan Cement S.A.E., 2016 WL 4072332 (C.D. Cal. July 27, 2016)	16-cv-01001	ASI granted	No. Grant of plaintiff's disputed motion for voluntary dismissal; grant of defendant's motion for attorneys' fees.	No appeal on ASI (9th Cir.)	Partial motion granted	Filed; not decided	Egypt
TCL Commc'n Tech. Holdings, Ltd. v. Telefonaktienbolaget LM Ericsson, 2015 U.S. Dist. LEXIS 191512 (C.D. Cal. June 29, 2015)	14-cv-00341	ASI granted	Yes.	No appeal on ASI (9th Cir.)	Granted in part; denied in part	Partial motion denied	France; U.K.; Brazil; Russia; Argentina; Germany
Teck Metals Ltd. v. Certain Underwriters at Lloyd's, London, 2009 WL 4716037 (E.D. Wash. Dec. 8, 2009)	05-cv-00411	ASI granted in part	Yes.	No appeal on ASI (9th Cir.)	Granted pursuant to settlement	Denied; partial motion granted	Canada
Teller v. Dogge, 2012 WL 4792912 (D. Nev. Oct. 9, 2012)	12-cv-00591	ASI denied	Yes. Default judgment for plaintiff.	No appeal (9th Cir.)	None	Denied in part	Belgium

Filed First (U.S./ Abroad)	Basis of Jurisdiction	Case Type	Amount in Controversy	Citizenship of Plaintiff	Citizenship of Defendant	Party Seeking ASI	Repetitive or Reactive
Brazil	Federal question; admiralty and maritime	Arbitration	Unknown	Netherlands	Brazil	Plaintiff	Reactive
U.S.	Federal question	Other; commercial; arbitration	Unknown	Ukraine	Norway	Plaintiff	Reactive
U.S.	Federal question	Other; arbitration	Unknown	Unknown	Unknown	Defendant	Repetitive
U.S.	Diversity	Contract	€500,000	U.S.	Germany	Plaintiff	Reactive
U.S.	Diversity	Contract	$3 billion	U.S.	Egypt; Italy	Defendant	Repetitive
U.S.	Diversity	Contract; patent	Unknown (over $75,000)	China; U.S.	U.S.; Sweden	Plaintiff	Reactive
U.S.; Canada (same day)	28 U.S.C. § 1441(d)	Insurance	Unknown	Switzerland	England; Ireland	Plaintiff	Reactive
U.S.	Federal question	Copyright	Unknown	U.S.	Unknown	Plaintiff	Reactive

Case	Docket No.	ASI or Stay Granted or Denied	Settlement? And Disposition if No Settlement	Appeal	Motion to Dismiss	Summary Judgment Motion	Foreign Forum(s)
Temporary Servs. Ins. v. O'Donnell, 2008 WL 11435777 (M.D. Fla. Mar. 26, 2008)	07-cv-01507	ASI denied	Yes.	No appeal (11th Cir.)	Denied	Granted in part; denied in part	Cayman Islands
Thermo Fisher Sci. Inc. v. Ducharme, 2008 WL 11399557 (S.D. Tex. Sept. 30, 2008)	08-cv-00009	ASI denied	Yes.	No appeal (5th Cir.)	Denied	Granted in part; denied in part	Mexico
T-Jat Sys. 2006 Ltd v. Amdocs Software Sys. Ltd., 2013 WL 6409476 (S.D.N.Y. Dec. 9, 2013)	13-cv-05356	ASI granted	No. Judgment for defendant, compelling arbitration; later confirmation of arbitration award.	No appeal (2d Cir.)	None	None	Israel
TQ Delta, LLC v. ZyXEL Commc'ns, Inc., 2018 WL 2932728 (D. Del. June 12, 2018)	13-cv-02013	ASI denied	Yes.	Settled while pending (Fed Cir. applying 3d Cir. law)	Denied in part	Filed; not decided	U.K.
Travelport Glob. Distrib. Sys. B.V. v. Bellview Airlines Ltd., 2012 WL 3925856 (S.D.N.Y. Sept. 10, 2012)	12-cv-03483	ASI granted	No. Judgment for plaintiff, compelling arbitration.	No appeal (2d Cir.)	None	None	Nigeria
Trikona Advisers Ltd. v. Chugh, 2012 WL 4759198 (D. Conn. Oct. 5, 2012)	11-cv-02015	ASI denied	No. Summary judgment for defendant.	No appeal on ASI (2d Cir.)	Denied as moot	Granted	Cayman Islands
Vringo, Inc. v. ZTE Corp., 2015 WL 3498634 (S.D.N.Y. June 3, 2015)	14-cv-04988	ASI denied	Yes.	No appeal (2d Cir.)	None	None	China
Weyerhaeuser Co. v. Hiscox Dedicated Corp. Members Ltd., 2019 WL 4082976 (W.D. Wash. Aug. 29, 2019)	19-cv-01277	ASI granted	Yes.	No appeal (9th Cir.)	Filed; not decided	None	U.K.
WTA Tour, Inc. v. Super Slam Ltd., 339 F. Supp. 3d 390 (S.D.N.Y. 2018)	18-cv-05601	ASI granted in part, denied in part	Yes.	No appeal (2d Cir.)	Denied	None	Cyprus; Spain; Romania

Filed First (U.S./ Abroad)	Basis of Jurisdiction	Case Type	Amount in Controversy	Citizenship of Plaintiff	Citizenship of Defendant	Party Seeking ASI	Repetitive or Reactive
Cayman Islands	Diversity	Tort; contract	Unknown (over $75,000)	Cayman Islands	U.S.	Defendant	Repetitive
Mexico	Diversity	Contract	$134,109	U.S.	U.S.	Plaintiff	Reactive
U.S.	Federal question	Arbitration	$2,250,000	Israel	Bailiwick of Guernsey	Plaintiff	Reactive
U.S.	Federal question	Patent	Unknown	U.S.	Taiwan; U.S.	Defendant	Repetitive
Nigeria	Federal question	Contract; arbitration	Unknown (at least $100,000)	Netherlands	Nigeria	Plaintiff	Reactive
U.S.	Diversity	Tort	$885,000	Cayman Islands; India	U.S.	Plaintiff	Reactive
China	Diversity	Contract	Unknown (over $75,000)	U.S.	China; U.S.	Plaintiff	Reactive
U.S.	Diversity	Contract; insurance	Unknown (over $75,000)	U.S.	U.K.	Plaintiff	Reactive
Cyprus; Spain; Romania	Federal question	Arbitration; tort	Unknown	U.S.	Cyprus	Plaintiff	Reactive

Case	Docket No.	ASI or Stay Granted or Denied	Settlement? And Disposition if No Settlement	Appeal	Motion to Dismiss	Summary Judgment Motion	Foreign Forum(s)
Younis Bros. & Co. v. CIGNA Worldwide Ins., 167 F. Supp. 2d 743 (E.D. Pa. 2001)	91-cv-06784	ASI granted	No. Judgment for defendant.	No appeal on ASI (3d Cir.)	Denied	Denied	Liberia
Zimnicki v. Neo-Neon Int'l, Ltd., 2009 WL 2392065 (N.D. Ill. July 30, 2009)	06-cv-04879	ASI denied	Yes.	No appeal (7th Cir.)	Granted pursuant to settlement	Filed; not decided	China
Zynga, Inc. v. Vostu USA, Inc., 816 F. Supp. 2d 824 (N.D. Cal. 2011)	11-cv-02959	ASI denied	Yes.	No appeal on ASI (9th Cir.)	Filed; not decided	None	Brazil

Filed First (U.S./ Abroad)	Basis of Jurisdiction	Case Type	Amount in Controversy	Citizenship of Plaintiff	Citizenship of Defendant	Party Seeking ASI	Repetitive or Reactive
U.S.	Diversity	Contract; insurance	$66.5 million	Liberia	U.S.	Defendant	Repetitive
U.S.	Federal question	Copyright	Unknown	U.S.	China; U.S.	Plaintiff	Reactive
U.S.	Federal question	Copyright	Unknown	U.S.	U.S.; Brazil	Defendant	Repetitive