

# INTERNATIONAL LITIGATION

FROM THE U.S. PERSPECTIVE

# FORUM SELECTION AGREEMENTS

- “We cannot have trade and commerce in world markets and international waters exclusively on our terms governed by our laws, and resolved in our courts.” *The Bremen v. Zapata*, 407 U.S. 1 (1972)
- COURT MAY DISREGARD FSC WHEN:
  - CONTRACT FORMATION DEFECTS (Fraud, Mutual Mistake, Capacity, etc)
  - UNREASONABLENESS (Serious Inconvenience, Lack of Remedy)
  - PUBLIC POLICY (Overriding Local Policy for Protection of Citizens)

# HAGUE CONVENTION ON CHOICE OF COURT AGREEMENTS

Art 2 – Exclusions (Consumers, Employ, Insurance)

Art 9 – Clause Null & Void if:

- Invalid Under State Law

- Lack of Capacity

- Against Public Policy

Art 1 – Scope of Convention

- International Cases, Exclusive FSC, Civil or Commercial

Art 3 – Definition of “Exclusive” & “Separability”

Art 5 – Selected Court Has Jurisdiction (No FNC)

Art 6 – Other Courts Must Suspend or Dismiss

Arts 8, 9 – Recognition & Enforcement

# LIS PENDENS STAYS & ANTISUIT INJUNCTIONS

ARISES WHEN THERE ARE PARALLEL  
PROCEEDINGS IN DIFFERENT COUNTRIES

LIS PENDENS STAY – Court Order Staying Action  
Before It While Case Proceeds in Other Country's Courts

ANTISUIT INJUNCTION – Court Order Directed at  
One Party Requiring Party to Not File or Dismiss Case in  
Other Country's Court Under Penalty of Contempt

# LIS PENDENS STAYS & ANTISUIT INJUNCTIONS (Cont'd)

## FACTORS RE DECISION TO GRANT OR DENY:

Who Filed First

Stage of Litigation

Are Parties & Claims the Same or Different

Is Relief Requested the Same or Different

Is Relief Available in Other Country Satisfactory

Convenience/Inconvenience to Parties, Witnesses,  
Etc

Public Policy & Interests of Two Countries

Parties' Motivation for Filing in The Country

# Next Week

## CHOICE OF LAW

TORT CASES

CONTRACT CASES

With Choice of Law Clause

Without Choice of Law Clause

MAYBE INTRODUCTION ON ARBITRATION