

EXTENSIONS OF REMARKS

CRS LETTER CLARIFYING EFFECTS OF H.R. 4571, THE LAWSUIT ABUSE REDUCTION ACT

HON. LAMAR S. SMITH

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. SMITH of Texas. Mr. Speaker, September 14 2004, the House debated and passed H.R. 4571, the Lawsuit Abuse Reduction Act, a bill I authored to help prevent frivolous lawsuits and the notorious practice of forum shopping from ruining America's small businesses.

In the midst of floor debate on H.R. 4571, the Congressional Research Service issued a self-described "rush memorandum" dated September 14, 2004, to the minority staff of the House Judiciary Committee, which stated "H.R. 4571 does provide an option for filing [a lawsuit] where a business has a principal place of business . . . However, if a defendant's principal place of business was not in the United States, then this option could not be exercised in a United States court. Consequently, it would appear that in certain circumstances, a United States citizen or resident injured in this country would not have a judicial forum in the United States in which to seek relief."

This statement left the misleading impression that H.R. 4571, were it to become law, would somehow make it more difficult to bring some personal injury lawsuits in the United States. Not surprisingly, the misleading impression left by the CRS memorandum was exploited by those on the opposite side of the aisle in the midst of debate on H.R. 4571, and later by the press. For example, a report in CongressDaily/A.M. describing debate on H.R. 4571 stated "Many Democrats . . . cited a Congressional Research Service memorandum advising lawmakers that the bill could prevent U.S. citizens from having their cases heard in a U.S. court if the defendant's main place of business is located in a foreign country. Rep. Jay Inslee, D-Wash., sarcastically called the legislation 'the Foreign Corporation Protection Act.'"

Those statements are deeply misleading, and here's why. In fact, nothing in H.R. 4571 would prevent cases from being brought against foreign defendants that are not already precluded under current law. I wrote to CRS requesting a clarification of current law, and I received the following response: "[U]nder the Due Process Clause, a foreign corporation that had its principal place of business overseas, engaged in little or no economic activity in the United States, and did not otherwise subject itself to the jurisdiction of the United States, could not be subject to the jurisdiction of the various state courts. If such a corporation engaged in a tortious activity such as manufacturing a defective product, then a plaintiff would be unable to bring an action in a state court forum for such tortious activity, even if the product caused an injury in the

United States. In such a case, an injured party would be required to seek compensation in the courts of another country."

This makes clear that while some Members on the other side of the aisle claimed that H.R. 4571, if enacted, would preclude certain lawsuits from being brought that could be brought under current law, the Due Process Clause of the Constitution has precluded under current law, and would continue to preclude under H.R. 4571, some plaintiffs from bringing an action in a state court forum against a foreign defendant for tortious activity in certain circumstances, even if the product caused an injury in the United States. The bottom line is that H.R. 4571 would do nothing to change current law in that regard. Indeed, no legislation could change current law in that regard since the constitutional requirements of the Due Process Clause cannot be changed by legislation.

In fact, the venue statute of the gentleman from Washington Mr. Inslee's own state provides that "An action . . . for the recovery of damages for injuries to the person or for injury to personal property may be brought, at the plaintiff's option, either in the district in which the cause of action, or some part thereof, arose, or in the district in which the defendant, or, if there be more than one defendant, where some one of the defendants, resides at the time the complaint is filed." That venue standard is for all practical purposes the same as that provided in H.R. 4571. H.R. 4571 provides that a personal injury lawsuit could be brought in any state where the person bringing the claim resides at the time of filing or resided at the time of the alleged injury, any state where the alleged injury or circumstances giving rise to the personal injury claim allegedly occurred, or where the defendant's principal place of business is located. Insofar as opponents of H.R. 4571 have a complaint regarding the inability to bring certain lawsuits against foreign corporations in the United States, their complaint is with the Constitution's Due Process Clause, and not with H.R. 4571, which simply reflects the same standard that prevails among the state's venue laws, subject of course to the Due Process Clause of the Constitution. If a foreign corporation's contacts with the United States are so minimal as to make it unconstitutional under the Constitution's Due Process Clause to subject them to suit in the United States regardless of whether the venue criteria of H.R. 4571—or of any State venue statute—are met, there is nothing a legislature can do by statute to remedy that situation.

To help set the record straight, I am submitting for the record both my letter to CRS requesting a clarification, and the CRS memorandum I received in response.

HOUSE OF REPRESENTATIVES,

Washington, DC, September 16, 2004.

KENNETH R. THOMAS,

Legislative Attorney, American Law Division,
Congressional Research Service, Washington, DC.

DEAR MR. THOMAS, It is my understanding that, under each State's venue statutes,

there might occur circumstances in which a foreign corporation with its principal place of business outside the United States causes personal injury to a person within the State, yet a tort lawsuit brought by such injured person against such foreign corporation would be precluded in the United States.

I am writing to request that the Congressional Research Service provide me with the following information:

Under each State's venue laws, are there any circumstances in which a foreign corporation with its principal place of business outside the United States would not be subject to suit in such State (or elsewhere in the United States) by a person within the State who alleges such foreign corporation caused such person personal injury within the State?

I would greatly appreciate this information by September 27, 2004.

Sincerely,

LAMAR SMITH,
Member of Congress.

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, October 4, 2004.

MEMORANDUM

To: Honorable Lamar Smith.

From: Kenneth R. Thomas, Legislative Attorney, American Law Division.

Subject: Preclusion of Tort Suits Against Foreign Corporations Under State Law.

The revised memorandum is to respond to your request to evaluate whether a state long-arm statute could allow plaintiffs to bring suits against a foreign corporation in a state where a tortious injury occurred based solely on the fact that injury occurred in that state. You also requested a determination as to whether, if a foreign corporation had its principal place of business outside of the United States, whether state statutes could allow law suits to be brought in all instances against such corporations based solely on the fact that such injury occurred in this country. As discussed below, because of constitutional and statutory concerns, a foreign corporation could in some instances be beyond the reach of United States' state courts.

In order, to sue a tortfeasor in a court, a plaintiff must generally establish that such court has personal jurisdiction over the defendant. At the state level, such jurisdiction is generally established by state long-arm statutes, which specify what level of contact must exist between a defendant and a state in order for a plaintiff to sue in that state. For instance, Tennessee law provides that a Tennessee state court may exercise personal jurisdiction over a defendant based on conduct outside the state for causing tortious injury inside the state. However, to do so, the defendant must "regularly * * * solicit[] business, or engage[] in any other persistent course of conduct, or derive[] substantial revenue from goods used or consumed or services rendered, in this state." So, a corporation that manufactures a defective product but does not meet the above stated criteria, would not be subject to the jurisdiction of the Tennessee courts, even if it manufactured a product which caused an injury to a plaintiff in Tennessee.

These types of statutory limitations are generally related to a need for a state's assertion of personal jurisdiction to be consistent with the United States Constitution. Under the Due Process Clause of the 14th

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Amendment, a state court must find that there are minimum contacts between the jurisdiction of a court and the defendant in a law suit in order to establish jurisdiction. As with the Tennessee statute cited above, the fact that an injury occurred in that forum would not generally be a sufficient basis to establish jurisdiction, but there must also be sufficient contacts between the defendant and the judicial forum.

Thus, under the Due Process Clause, a foreign corporation that had its principal place of business overseas, engaged in little or no economic activity in the United States and did not otherwise subject itself to the jurisdiction of the United States, could not be subject to the jurisdiction of the various state courts. If such a corporation engaged in a tortious activity such as manufacturing a defective product, then a plaintiff would be unable to bring an action in a state court forum for such tortious activity, even if the product caused an injury in the United States. In such a case, an injured party would be required to seek compensation in the courts of another country.

PAYING TRIBUTE TO RAY
KOESTER

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. McINNIS. Mr. Speaker, it is with a heavy heart that I rise to mourn the passing of Ray Koester from Pueblo, Colorado. Ray, recently passed away at the age of 78 after a battling a lengthy illness. He was known for his energetic commitment, and straightforward personality that impressed everyone that he encountered. As his family and friends mourn this loss, I believe it is appropriate to remember Ray and pay tribute to him for his contributions to the State of Colorado.

Ray earned his engineering degree in 1950 from the University of Denver and spent the next five decades as an engineer in the Pueblo community. He was extremely dedicated to all his projects and continued to work on them despite the limitations of his illness. Some of the biggest projects that he worked on included the Belmont subdivision, the Historic Arkansas Riverwalk, and the Levee Mural. Ray was also the longtime administrator and consulting engineer for the Conservancy District and worked with other organizations such as the HARP program, the Pueblo Board of Water Works, and the Colorado Outdoor Performing Arts Project.

He was truly an engaged citizen who taught Sunday school for over 40 years, and served as the chairman of the local Republican party at the age of 74, in addition to being active in civic organizations like the Salvation Army, the Lion's Club, the Kiwanis Club and the Greater Pueblo Chamber of Commerce.

Mr. Speaker, we are all terribly saddened by the loss of Ray Koester, though take comfort in the knowledge that our grief is overshadowed only by the legacy of dedication that Ray has left with us. I am honored to pay tribute to such a devoted public servant, one who has so effectively served the state of Colorado. I know that many throughout our State who had the chance to benefit from his experience and dedication will miss Ray Koester. My thoughts and prayers go out to his family during this time of bereavement.

CONGRATULATION TO THE U.S.
MEN'S ELITE EIGHT ROWING
TEAM

HON. JOHN N. HOSTETTLER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. HOSTETTLER. Mr. Speaker, forty years is a long time to wait for anything. But sometimes a dream deferred is all the sweeter when it finally comes true.

Nobody knows that better than Dan Beery, a native of Oaktown, Indiana and a member of the U.S. Men's Elite Eight rowing team. It was Dan and his teammates who won the gold medal at the Olympic Games in Athens on Aug. 22. They set a world record when they did it. It had been 40 years since the U.S. won that Olympic event.

Dan's story is an inspiration. He grew up in a small town in Indiana. He played football and basketball at North Knox High School. He began his college career at Vincennes University and eventually transferred to the University of Tennessee-Chattanooga, where his life would be changed by a providential meeting. In 1997, Dan was playing a game of pickup basketball when the coach of the crew team walked by. The coach stopped and asked the six-foot-seven Hoosier to try out for the rowing team. Dan did and quickly showed potential. And while he became a good college rower, he failed to make the national team 5 years in a row.

But Dan would not give up. He devoted himself to his training. He had the ardent support of his parents, Jim and Merry Beery, who still live in Oaktown, and his sisters, Meredith and Marsha. And the whole community rallied behind Dan with support and fundraisers.

This small-town unity of spirit made a difference. When he returned to Knox County with his gold medal, Dan told a local newspaper that the one question people ask him the most is how he became an Olympic champion considering most in the sport are from Ivy League universities.

"My answer is how could I not?," Beery said. "I came from a place with warm and loving people who supported me no matter what."

Dan's determination paid off. He made the national team and in the 2002 World Championships won silver in the men's pair with coxswain event. At the 2003 World Championships, he won gold.

Earlier this year, Dan was a member of the four-man crew that won gold at the 2004 World Cup in Lucerne, Switzerland. Following that success, he was moved into the eight for the Olympic games in Greece. It was that crew that surged early and won the first gold for the United States in four decades.

His crew also included Jason Read, a volunteer firefighter who was at ground zero after the terrorist attacks of Sept. 11, 2001.

Mr. Speaker, Dan Beery is an inspiration to young people who dare to dream big dreams. He is the pride of his community. Dan embodies the American dream, where hard work and perseverance, combined with the encouragement and support of family and community, great things can be achieved.

Dan himself says it best: "Just because you're from a little town in Indiana doesn't mean you can't make it to the Olympics and win."

CONGRATULATIONS TO ST.
GEORGE'S GREEK ORTHODOX
CHURCH ON THEIR 75TH ANNI-
VERSARY

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. VISCLOSKY. Mr. Speaker, it is with great honor and enthusiasm that I congratulate St. George Greek Orthodox Church as they join together in celebration of their 75th anniversary. They will be celebrating this very momentous and special occasion October 14–17, 2004.

From their modest beginnings, St. George's has emerged as a cornerstone of the community. St. George was founded by Greek immigrants in October, 1929 in East Chicago, Indiana. In 1982, the parish moved to Schererville and held church services in a chapel. In March 1992, the parish celebrated a "new beginning" when a brand new building was constructed and the first services were held in the new church. A community which first started with 25 members has grown to over 500 members. The church stewards reside all across Lake County and the country.

The spiritual Father Reverend Constantine Aliferakis has been St. George's leader for the past 16 years. Under Father Aliferakis's guidance, St. George continues to thrive, both in terms of spiritual growth as well as practical improvements. An integral part of the community is the St. George Ladies Philoptochos Society, which spearheads charitable works in and around the community.

The celebration weekend begins on Thursday, October 14, 2004 with church services and the veneration of an actual relic of the body of St. George. On Friday, October 15, 2004 the church will hold a reunion basketball game and homecoming dance at Grimmer Middle School. Saturday, October 16 there will be an Anniversary golf outing at Scherwood Golf Center followed by the Anniversary Gala at the Grand Hall of St. George Greek Orthodox church. The celebration banquet will conclude the festivities on Sunday, October 17, when the church welcomes His Eminence Metropolitan Iakovos, leader of the Greek Orthodox Church of Chicago, for a Hierarchical Service followed by an Anniversary luncheon.

Mr. Speaker, I ask that you and my other distinguished colleagues join me in honoring and congratulating St. George Greek Orthodox Church on their 75th anniversary. Throughout many hardships and trials, the members of St. George have dedicated themselves to providing a spiritual and guiding light through the protection of the Greek Orthodox faith and traditions for all of Northwest Indiana. Their constant dedication and commitment is worthy of the highest commendation.

APPLAUDING THE ADMINISTRATION FOR FIGHTING FOR AMERICAN COMPANIES AND WORKERS

HON. W. TODD AKIN

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. AKIN. I rise to applaud President Bush and U.S. Trade Representative Bob Zoellick