

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

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