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Global trade spurs rise in worldwide suits

by HEATHER FLETCHER

Call it the court of international appeal.

The increasingly global nature of business has led to a steady rise in global litigation, and James P. Duffy III is on the front lines, viewing the worldwide legal arena through the lens of a local lawyer practicing international law.

"Litigation no longer has boundaries," said Duffy, managing partner of Berg and Duffy in Lake Success. "People are doing business all over the world."

Global trade and travel means disputes naturally arise as people interact, Duffy said. In fact, suits are so numerous that Karen Redmond, spokeswoman for the U.S. Courts Administrative Office, said no general statistics were available about lawsuits including international parties because so many international links exist.

The only statistic that could be isolated was Bankruptcy Code 304, which Jeffrey A. Wurst, partner at the Uniondale-based law firm of Ruskin Moscou Faltischek, describes as a way for foreign companies to ask American courts to stop their assets in the United States from being seized during a foreign bankruptcy proceeding.

U.S. Bankruptcy Court records released March 1 show that New York's Southern District - the most popular venue for these cases - had 109 filings in 2004, up from 42 in 2003 and 34 in 2002. Going back to 1997, the district saw seven.

Duffy said he's witnessed different areas of international lawsuits, such as trade disputes, multiply at a similar pace.

"It's been increasing in the last 10 years or so," he said. "And it's increasing even more so now that people have discovered the Internet."

Many Long Island lawyers report working on international lawsuits as part of their everyday practice.

Wurst, chairman of his firm's financial services, banking and bankruptcy department, worked a few years ago on a 304 insolvency involving a Hong Kong bankruptcy's ancillary filing in the Southern District.

"Our economy has truly become an international economy," Wurst said. "It can no longer be defined as a Long Island, New York or even nationally based economy. Businesses on Long Island, just as everywhere else, are doing business with other countries on an increasingly regular basis. In many ways, the rise in international litigation is an indicator that the global economy is working, because increased business activity at the international level will naturally result in problems and issues that require a vehicle for redress."

Duffy theorizes that universal commercial codes will go the way of the Uniform Commercial Code that smoothed out interstate trade in the 1960s. As an example, his Lake Success firm has offices in Monaco and Mexico City.

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"We're just going to have to harmonize law," he said. "The businesspeople are going to force that on their governments."

Last month, the United Nations Commission on International Trade Law updated its statistics on the number of nations implementing its sales guidelines - 64 - and the jurisdictions adhering to its arbitration codes - more than 40.

Duffy said that's still not enough, considering the increase in international trade in the past 10 years and his belief that some countries do a better job of following the guidelines than others. He noted that New York is particularly good about avoiding discrimination.

On April 21, the Southern District court granted a request from one of Duffy's clients from Monaco, Repossi Jewelers, to stop a Manhattan distributor it was unhappy with from using the Repossi name and selling Repossi jewelry, the court opinion shows. But Duffy's firm is just as likely to represent an American client in an international court - which actually happens with half of his firm's caseload, he said.

Scott M. Karson, president of the Suffolk County Bar Association and a partner at Lamb and Barnosky in Melville, said at the moment, the most important aspects of international lawsuits can be difficult for courts to immediately determine. Finding the proper jurisdiction and applicable laws are the most significant aspects of each international case, which he encountered while defending an American company against a Swiss company's lawsuit. In 1988, the Eastern District court disagreed with his assertion that it was the proper jurisdiction for his case.

"The American court held that the case should've been brought in Switzerland," he said. "So our case was dismissed."

So the Swiss company filed again at home.

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