

United States Court of Appeals
For The Eighth Circuit
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July 11, 2023

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RE: 23-1625 Sr. Kate Reid, et al v. Doe Run Resources Corp., et al

Dear Counsel:

The amicus curiae brief of the State of Missouri has been filed. If you have not already done so, please complete and file an Appearance form. You can access the Appearance Form at www.ca8.uscourts.gov/all-forms.

Please note that Federal Rule of Appellate Procedure 29(g) provides that an amicus may only present oral argument by leave of court. If you wish to present oral argument, you need to submit a motion. Please note that if permission to present oral argument is granted, the court's usual practice is that the time granted to the amicus will be deducted from the time allotted to the party the amicus supports. You may wish to discuss this with the other attorneys before you submit your motion.

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AMT

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District Court/Agency Case Number(s): 4:11-cv-00044-CDP

No. 23-1625

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

SR. KATE REID, *et al.*,
Plaintiffs-Appellees,

v.

THE DOE RUN RESOURCES CORPORATION, *et al.*,
Defendants-Appellants.

Appeal from the United States District Court for the Eastern
District of Missouri, Hon. Catherine D. Perry, No. 4:11-cv-00044-CDP

**BRIEF FOR THE STATE OF MISSOURI
IN SUPPORT OF APPELLANTS AND REVERSAL**

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STATEMENT OF INTEREST AND INTRODUCTION

Not often do Missouri courts review a case involving thousands of plaintiffs from Peru, arguing about injuries incurred in Peru, from conduct allegedly performed in Peru, and subject to the laws of Peru. Yet this case is before this Court because the district court determined that Missouri is a proper venue to hear these thousands of claims. The district court made this conclusion in part based on its determination that Missouri has an interest in this suit being heard in Missouri. Add. 67.

The State of Missouri disagrees. On behalf of the State, the Attorney General of Missouri files this brief to exercise his authority to assert “the rights and interests of the state,” Mo. Rev. Stat. § 27.060, and inform this Court that the State lacks any substantial interest in this case proceeding in Missouri rather than in some other venue. To the contrary, this case on net harms the interests of the State.¹

¹ No counsel for a party in this case authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation of this brief. No person other than amicus curiae made a monetary contribution to the preparation or submission of this brief. Because this brief is submitted by a State, no motion or consent of the parties is necessary. F.R.A.P. 29(a)(2).

ARGUMENT

When assessing whether a dispute should be heard domestically instead of in a foreign court, this Court must assess the relative interests of the jurisdictions and the adequacy of the foreign forum. *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227, 1238 (11th Cir. 2004). Where, as here, the plaintiffs complain about injuries occurring in a foreign nation from acts allegedly undertaken in that foreign nation, U.S. courts regularly conclude that the foreign sovereign has the stronger interest because of the “presumption against extraterritorial application of U.S. law.” *Mujica v. AirScan Inc.*, 771 F.3d 580, 605 (9th Cir. 2014) (“Not surprisingly, U.S. courts have afforded far less weight, for comity purposes, to U.S. or state interests when the activity at issue occurred abroad.”). Other courts have applied this rule to determine that actions should be heard in Peru. *E.g.*, *Torres v. S. Peru Copper Corp.*, 965 F. Supp. 899, 909 (S.D. Tex. 1996) (dismissing action where the “activity and the alleged harm occurred entirely in Peru [and] Plaintiffs are all residents of Peru”), *aff’d*, 113 F.3d 540 (5th Cir. 1997).

The plaintiffs have not overcome the strong presumption against bringing a suit in Missouri over foreign conduct and foreign injuries.

Where an activity “occurred exclusively within the territory of a foreign state and involved solely foreign victims,” plaintiffs bear an especially high burden. *Mujica*, 771 F.3d at 611. Regardless of the interests of the United States or Peru, Missouri on net simply has no substantial interest in this case being heard in Missouri courts.

1. For starters, Missouri has at best only a tenuous interest in this litigation proceeding in Missouri. None of the alleged conduct occurred in Missouri. None of the alleged victims appears to have been residents of Missouri. And although Missouri takes its own environmental laws very seriously, none of these laws govern conduct occurring outside the United States.

The district court nonetheless determined that Missouri has a sizable interest, noting that Missouri “ha[s] an interest in the conduct of its corporate citizens abroad.” Add. 67. But the plaintiffs are not suing over the conduct of Missouri citizens in Peru (much less in Missouri); they are suing over the conduct of a foreign company incorporated under the laws of Peru. To be sure, plaintiffs have alleged that a Missouri-based company made investments in the Peruvian company at issue, but Plaintiffs are complaining about the pollution, not the act of investment.

Missouri has no substantial interest in the activities of a foreign corporation operating under the laws of that foreign nation. At the very least, Missouri has less interest than does Peru, which has formally objected to this case proceeding in Missouri courts.

2. Not only does this case fail to advance Missouri's interests. It in fact affirmatively undermines them. For three reasons, allowing this case to proceed in Missouri courts would harm the State.

First, clogging Missouri courts with thousands of claims unrelated to the State delays justice for Missourians. This issue involves around 2,400 individual plaintiffs who are not residents of Missouri. It is not being tried as a class action. Instead, it could require as many as hundreds or thousands of trials to assess individual damages. These trials will require even more judicial resources than normal because of the need to bring evidence and witnesses across the world from Peru. As a frequent litigant in both state and federal court, the Attorney General's Office is well aware of the harms that occur when a court system becomes clogged. Allowing this case to proceed would harm the interests of all Missourians who rely on the court systems in this State.

Second, allowing this case to proceed would harm Missouri's economy relative to other States. On this record, the *only* connection between Missouri and conduct in Peru is that a Missouri company made some capital investments in the company accused of engaging in bad conduct in Peru. Foreign investment can often create a win-win situation where domestic companies earn a financial return while foreign companies become empowered to make infrastructural improvements that pull millions out of poverty. If domestic companies can be haled into Missouri courts simply because of a foreign investment, then any company that wants to engage in foreign investment will think twice before establishing a presence in Missouri. After all, nobody would buy stock in a company if they knew this simple act of investment could make them responsible for the company's misdeeds overseas.

Third, it is against Missouri's interest to become entangled in an international dispute with Peru. The record here suggests that policymakers in Peru faced a question of balancing anti-poverty goals with environmental goals. Faced with a factory that produced both bad outputs (substantial pollution) and good outputs (thousands of jobs in a region struggling economically), Peru decided not to throw the good out

with the bad. It instead sought to limit pollution while allowing the facility to continue operating. To that end, it sought outside capital investment to improve infrastructure. R. Doc. 545-9, at 7–10. And to attract that investment, Peru exercised sovereign authority to give potential investors limited immunity. Add. 23; R. Doc. 843-17, at 20–21.

If this case is permitted to proceed in Missouri courts, it risks overriding that sovereign decision by Peru. Missouri would certainly object if Peruvian courts exercised jurisdiction to override Missouri’s sovereign interests, so Missouri has no problem here with extending comity to Peru. The entire point of the comity doctrine is to prevent disputes from “implicat[ing] the nation’s foreign relations.” *Ungaro-Benages*, 379 F.3d at 1232. Yet as Peru’s formal objection to jurisdiction has established, this case is already causing negative foreign entanglement between Peru and the courts of Missouri.

That entanglement is especially difficult for Missouri because Missouri lacks the foreign affairs powers it could use to resolve entanglement if it were an independent nation. “When a State enters the Union, it surrenders certain sovereign prerogatives,” *Massachusetts v. E.P.A.*, 549 U.S. 497, 519 (2007), such as the power over foreign affairs,

Holmes v. Jennison, 39 U.S. 540, 574 (1840). The “concern for uniformity in this country’s dealings with foreign nations” is what “animated the Constitution’s allocation of the foreign relations power to the National Government in the first place.” *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 413 (2003) (citation omitted). Unlike the United States, which can engage in foreign affairs diplomacy to resolve concerns about foreign litigation, Missouri’s foreign affairs toolbox is limited. Missouri has very few means it can use to mitigate tension with Peru that may be created by these cases in the future.

CONCLUSION

If the foreign company that allegedly polluted parts of Peru is guilty of violating Peruvian law, it ought to be held accountable in the proper forum. But this Court should conclude that Missouri has no interest in this case proceeding in courts in Missouri. To the contrary, it is emphatically against the interests of the State.

July 5, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that Appellants' Brief complies with the typeface and formatting requirements of Fed. R. App. P. 29 and 32, in that it is written in Century Schoolbook 14-point font, and that it contains 1,382 words as determined by the word-count feature of Microsoft Word, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). The hard copies submitted to the clerk are exact copies of the CM/ECF submission.

/s/ Joshua M. Divine
Joshua M. Divine

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was electronically filed on July 5, 2023, with the Clerk of Court for the United States Court of Appeals for the Eighth Circuit using the CM/ECF system; that all participants are registered CM/ECF users; and that service will be accomplished by the CM/ECF system.

/s/ Joshua M. Divine
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