10-4524

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

IN RE: ARAB BANK, PLC

Petitioner

ON PETITION FOR A WRIT OF MANDAMUS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR THE INSTITUTE OF INTERNATIONAL BANKERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS AND URGING REVERSAL

Proceeding Below: Linde v. Arab Bank, PLC, No. 04 CV 2799 (NG) (VVP) And All Related Cases (E.D.N.Y.), Honorable Nina Gershon

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RULE 26.1 STATEMENT OF CORPORATE INTEREST

The *amicus* is not owned by a parent corporation, and no publicly held corporation owns more than 10% of stock in the *amicus*.

/s/
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STATEMENT OF INTEREST[1]

The Institute of International Bankers ("IIB") is the only national association devoted exclusively to representing and protecting the interests of international banking organizations with operations in the U.S. The IIB's membership consists of internationally headquartered banks and financial institutions from 39 countries that have operations throughout the U.S., particularly in New York. Collectively, the U.S. operations of the IIB's members have total U.S. assets of approximately $4.8 trillion, employ nearly 250,000 people in the U.S., and spend more than $60 billion annually on their U.S. operations. The IIB regularly appears as *amicus curiae* in cases that raise significant legal issues related to international banking. The IIB and its member banks have a substantial interest in the outcome of this action because the case threatens to set precedent for similar actions having a substantial impact on IIB and its members.

The IIB respectfully seeks leave to file this amicus brief in support of the Appellant. This brief addresses only the initial legal obligation to comply with discovery requests that would require the responding party to disclose information in violation of another country's laws or regulations. The IIB takes no position on the merits of the underlying action or on the issue of the appropriateness of the

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[1] This brief was not authored in whole or part by any party's counsel, and money was contributed to fund its preparation solely by the *amicus* and its members. See Loc. R. 29.1(b).

sanctions. The IIB has submitted a motion concurrently with this brief seeking leave to file. The IIB has received the consent of the appellant. Appellees were not able to consent to the filing of this brief.

INTRODUCTION

In the years since courts began to examine the interplay between United States federal discovery rules and foreign laws, the landscape of the banking and financial sectors has evolved in dramatic ways. Increasingly, local banks and savings and loan associations have given way to national and international banks that are able to serve the needs of their global clients by providing services in multiple jurisdictions and currencies. Banks and other financial institutions are obliged to follow the local domestic laws of the various countries in which they operate. Yet, in this increasingly international financial landscape, involving the interplay of multi-jurisdictional legal and regulatory authorities, a bank may face a conflict between the laws of two nations. This appeal involves just such a circumstance: a foreign bank faced with the dilemma of attempting to comply with its U.S. pretrial disclosure obligations despite the restrictions imposed on it as a matter of law by the foreign countries in which it operates.

As the Supreme Court and other courts have observed, courts should be careful to refrain from creating such conflicts between U.S. legal obligations and those imposed by foreign nations, particularly where the U.S. laws operate

extraterritorially. This notion animates many key U.S. legal principles. For example, it gives rise to the principle of comity, "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation," *Hilton v. Guyot*, 159 U.S. 113, 164 (1895), and which promotes "critical components of successful international commercial enterprises." *General Elec. Co. v. Deutz Ag*, 270 F.3d 144, 160 (3d Cir. 2001). This principle also is embodied in the anti-extraterritorial canon of statutory construction recently employed by the Supreme Court in *Morrison v. National Australia Bank*, which reaffirmed the "longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." 130 S. Ct. 2869, 2877 (2010) (internal quotation marks omitted). The aversion to conflicts in laws is reflected further in the "Charming Betsy" doctrine, which provides that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains." *Murray v. Charming Betsy, The*, 6 U.S. 64, 118 (1804).

Many prominent foreign nations have bank secrecy laws. In addition, many countries have enacted data privacy laws to ensure that personal information—including financial records—remains confidential. An approach to resolve the potential conflict between such laws and U.S. discovery obligations should be careful not to create unnecessary "either/or" scenarios that would require banks

and other financial institutions to make the difficult but unavoidable choice of selecting one legal obligation to obey—foreign or U.S.—at the cost of noncompliance with the other. The balancing tests articulated by the Supreme Court and the Restatement of the Foreign Relations Law of the United States seek to reconcile such conflicts.

The application of those balancing tests undertaken by the district court below improperly disregarded the relative weight and importance of foreign law. That approach, unless reversed, risks the creation of unnecessary conflicts between U.S. discovery obligations on the one hand and the demands of foreign privacy laws and similar confidentiality requirements restricting the disclosure of data on the other. As the Supreme Court and the Restatement of Foreign Relations recognize, a different balance must be struck in such circumstances.

The IIB urges the Second Circuit to recognize that a plaintiff's allegations of U.S. legal violations are generally insufficient to give rise to the U.S. interest that should prevail over the interests of foreign states in having their laws control. This is especially the case where the information is protected from disclosure by foreign law, is stored in a foreign state, and relates to foreign accounts or transactions of foreign persons or entities. In such circumstances, a prevailing U.S. legal interest should be grounded in more than the unsubstantiated allegations of a plaintiff. The Second Circuit should clarify that the applicable framework demands more support

before foreign law must yield. Such a test is more in line with the principles recognized by the Supreme Court and the values of international comity.

ARGUMENT

I. NUMEROUS COUNTRIES AROUND THE WORLD HAVE ADOPTED RESTRICTIONS ON DISCLOSURES OF PERSONAL FINANCIAL INFORMATION.

A multitude of nations (including the U.S.) have some combination of data protection and bank secrecy laws. Data privacy and bank secrecy laws share a similar purpose—both are aimed at protecting personal information. Data privacy laws, however, tend to be broader, applying to data processed by many different businesses and entities (including banks). By contrast, bank secrecy laws generally apply only to banks and financial institutions.

The laws have a significant heritage. The Swiss Banking Law of 1934 was developed in part to thwart attempts of Nazi authorities to investigate the assets of Jews and "enemies of the state." Kurt Mueller, *The Swiss Banking Secret: From a Legal View*, 18 INT'L & COMP. L.Q. 2, 361–62 (1969). After the Second World War, restrictions on disclosure found support in an individual's right to control personal information, which was embodied in the United Nations Universal Declaration of Human Rights. G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) ("No one shall be subjected to arbitrary interference with his privacy…. Everyone has the right to the protection of the law against such

interference or attacks."). A similar principle is embodied in U.S. law. For example, "[i]t is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information." Gramm-Leach-Bliley Act, Pub. L. 106-102, 113 Stat. 1436 (1999) (codified at 15 U.S.C. § 6801).

Though bank secrecy laws have long sought to protect the privacy of financial information, the advent of information technology spurred increased interest in data privacy and protection, and countries began adopting legislation beyond the banking arena in the early 1970s. *See* Privacy Int'l, Privacy & Human Rights 2003: Overview,[2] ("[T]he first data protection law in the world [was] enacted in the Land of Hesse in Germany in 1970. This was followed by national laws in Sweden (1973), the United States (1974), Germany (1977), and France (1978)."). As technology and the global economy have developed, countries have continued to update and amend these laws. Numerous additional countries have adopted them, including under the European Union Directive 95/46/EC, which directs EU member states to enact laws that "protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to

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[2] http://www.privacyinternational.org /survey/phr2003/overview.htm (last visited Oct. 29, 2010).

the processing of personal data." European Union Directive 95/46/EC, 1995 O.J. L281 (EC).

Bank secrecy and data protection laws have similar goals and restrictions, among them is to institute "safeguards for the individual which will prevent an invasion of privacy in the classical sense, i.e. abuse or disclosure of intimate personal data." *Organisation for Economic Cooperation & Development ("OECD") Guidelines on the Protection of Privacy & Transborder Flows of Personal Data*.[3] The laws often have common features, including "setting limits to the collection of personal data in accordance with the objectives of the data collector and similar criteria; restricting the usage of data to conform with openly specified purposes; creating facilities for individuals to learn of the existence and contents of data and have data corrected; and the identification of parties who are responsible for compliance with the relevant privacy protection rules and decisions." *Id.* Although these laws and regulations operate within the boundaries of the countries that promulgate them, many international organizations, the OECD and European Union among them, have recognized the importance of these laws internationally. Countries "have a common interest in preventing the creation of

[3] http://www.oecd.org/document/18/0,3343,en_2649_34255_1815186_1_1_1_1,00.html#memorandum (last visited Oct. 27, 2010).

locations where national regulations on data processing can easily be circumvented." *Id.*

Indeed, of the 33 member states of the OECD, "more than one-third have so far enacted one or several laws which, among other things, are intended to protect individuals against abuse of data relating to them." *Id.* Other governmental bodies, such as the European Union, have strengthened their existing data privacy regimes. *See, e.g.*, European Union Directive 95/46/EC, 1995 O.J. L281 (EC). Under the new Directive, Belgium, Greece, Latvia, Austria, Finland, Bulgaria, Spain, Lithuania, Poland, Sweden, Czech Republic, France, Luxembourg, Portugal, United Kingdom, Denmark, Hungary, Romania, Germany, Italy, Malta, Slovenia, Estonia, Cyprus, Netherlands, and Slovakia have all instituted legislation regarding data privacy. *Status of implementation of Directive 95/46 on the Protection of Individuals with regard to the Processing of Personal Data*, EUROPA.[4]

II. U.S. COURTS HAVE RESISTED THE CREATION OF CONFLICTS WITH FOREIGN LAWS AND ADHERED TO PRINCIPLES OF COMITY.

U.S. courts have long applied the principles of comity, "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and

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[4] http://ec.europa.eu/justice/policies/privacy/law/implementation_en.htm (last visited Nov. 2, 2010).

convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws." *Hilton v. Guyot*, 159 U.S. 113, 164 (1895). As the one court has explained, "the practice of using international law to limit the extraterritorial reach of statutes is firmly established in our jurisprudence." *ARC Ecology v. U.S. Dept. of Air Force*, 411 F.3d 1092, 1103 (9th Cir. 2005). Courts, recognizing that chaos ensues when different nations establish laws governing the same conduct but dictating different results, have stated:

> [C]omity promotes predictability and stability in legal expectations, two critical components of successful international commercial enterprises. It also encourages the rule of law, which is especially important because as trade expands across international borders, the necessity for cooperation among nations increases as well….
> ….
> …"The expansion of American business and industry will hardly be encouraged if, notwithstanding solemn contracts, we insist on a parochial concept that all disputes must be resolved under our laws and in our courts...."

General Elec. Co. v. Deutz Ag, 270 F.3d 144, 160 (3d Cir. 2001) (quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 9 (1972)).

As a result, "states normally refrain from prescribing laws that govern activities connected with another state when the exercise of such jurisdiction is unreasonable." *In re Maxwell Commc'n Corp.*, 93 F.3d 1036, 1047-48 (2d Cir. 1996) (internal quotation marks omitted). As this Court has observed, "The interest of the system as a whole—that of promoting a friendly intercourse between the sovereignties—also furthers American self-interest, especially where the

workings of international trade and commerce are concerned." *Id.* at 1053 (internal quotation marks omitted). Moreover, the principle of comity "serves to protect against unintended clashes between our laws and those of other nations which could result in international discord." *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991). Thus, courts historically have held that statutes should not be interpreted to regulate foreign persons or conduct if that regulation would conflict with principles of international law. *See, e.g.*, *Murray v. Charming Betsy, The*, 6 U.S. 64, 118 (1804) ("[A]n act of Congress ought never to be construed to violate the law of nations if any other possible construction remains."); *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 381-84 (1959) (interpreting the Jones Act not to apply to a tort committed against a Spanish sailor on a Spanish vessel in American territorial waters). The Supreme Court continues to emphasize comity. As the Supreme Court has recognized, "[w]e cannot have trade and commerce in world markets ... exclusively on our terms, governed by our laws, and resolved in our courts." *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 9 (1972).

This notion of forbearance is especially important in the context at hand. Discovery disputes often involve whether to compel the disclosure of information of foreign companies or persons, created and stored in a foreign jurisdiction, and protected by the laws of a foreign sovereign. Although U.S. procedural rules apply

to foreign litigants over whom a U.S. court has jurisdiction, comity requires caution before applying those rules to create conflicts with foreign law.

III. UNRECONCILABLE CONFLICT BETWEEN U.S. AND FOREIGN LAW SHOULD NOT BE CREATED ON THE BASIS OF UNSUBSTANTIATED ALLEGATIONS.

The Supreme Court has exercised special care in the two leading cases requiring discovery of information and documents located abroad. In the second of those two cases, the Supreme Court endorsed, in passing, the weighing of factors set forth in a draft of the Restatement of Foreign Relations. A careful weighing of those factors would result in appropriate deference to foreign laws in recognition of principles of comity—and thereby avoid causing the problematic situation in which responding parties to discovery requests are put in the difficult position of having to choose between complying with a discovery order or following foreign legal restrictions on disclosure. Finding a prevailing U.S. interest in discovery as a result of unsubstantiated allegations, however, increases the conflict and fails to adequately balance the import of countervailing foreign law. The seeds for a more balanced approach—which looks beyond unsubstantiated allegations—can be found in other cases, including cases of this Court. Such a balanced approach reduces the likelihood that banks, other financial institutions, and other litigants will be put in the unfortunate position of having to choose between violating U.S. discovery rulings or foreign privacy restrictions.

A. The Supreme Court Has Emphasized The Importance of Respect for Foreign Law In Discovery Disputes.

Many of the cases addressing the conflict between discovery requests in U.S. cases and the obligations of foreign law begin their analyses with recognition of the Supreme Court's two leading cases touching upon these issues. In *Société Internationale Pour Participations Industrielles Et Commerciales, S. A. v. Rogers*, plaintiff brought suit to recover assets seized by the U.S. government during World War II. 357 U.S. 197, 198-99 (1958). The U.S. government was seeking banking records to establish the ownership of the property at issue. *Id.* at 199-200. Plaintiff sought to be "relieved of production on the ground that disclosure of the required bank records would violate Swiss penal laws and consequently might lead to imposition of criminal sanctions." *Id.* at 200. The district court found that production was required and ordered the dismissal of the complaint on the grounds that plaintiff failed to produce the records sought. *Id.* at 202. The Supreme Court reversed. As an initial matter, the Court rejected the assertion that plaintiff did not "control" the records as required by Federal Rule of Civil Procedure 34 given the foreign restrictions on disclosure. *Id.* at 204-06. The Court, however, concluded that dismissal was too harsh of a sanction. It noted that plaintiff's "failure to satisfy fully the requirements of this production order was due to inability fostered neither by its own conduct nor by circumstances within its control." *Id.* at 211. Accordingly, the Court held that "Rule 37 should not be construed to authorize

dismissal of this complaint because petitioner's noncompliance with a pretrial production order when it has been established that failure to comply has been due to inability, and not to willfulness, bad faith, or any fault of petitioner." *Id.* at 212.

In a second case, *Société Nationale Industrielle Aérospatiale v. U.S. District Court for the Southern District of Iowa* (hereinafter "*Société Nationale*"), the Supreme Court addressed whether discovery of foreign litigants had to comply with the procedures in the Hague Convention. 482 U.S. 522, 524 (1987). The Eighth Circuit rejected a mandamus petition, holding that "when the district court has jurisdiction over a foreign litigant the Hague Convention does not apply." *Id.* at 528. The Supreme Court rejected that holding. The Court held that although the Hague Convention was "not a pre-emptive replacement" for the federal rules, *id.* at 536, "the concept of international comity requires in this context a more particularized analysis of the respective interests of the foreign nation and the requesting nation."[5] *Id.* at 543-44. Importantly, the Court emphasized that

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[5] The Court explained that

> "'Comity,' in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws."

Société Nationale, 482 U.S. 543 n.27 (quoting *Hilton* v. *Guyot*, 159 U.S. 113, 163-64 (1895)).

"American courts should ... take care to demonstrate due respect for any special problem confronted by the foreign litigant on account of its nationality or the location of its operations, and for any sovereign interest expressed by a foreign state." *Id.* at 546.

The Court refused to "articulate specific rules to guide this delicate task of adjudication," *id.*, but the Court did provide three important instructions to lower courts. First, the Court invited careful scrutiny of discovery requests:

> When it is necessary to seek evidence abroad, … the district court must supervise pretrial proceedings particularly closely to prevent discovery abuses…. Objections to "abusive" discovery that foreign litigants advance should therefore receive the most careful consideration.

Id. at 546. Second, the Court invited lower courts to draw distinctions between the types of discovery sought when determining whether to require compliance with discovery. The Court stated that "[s]ome discovery procedures are much more 'intrusive' than others" and noted that a simple interrogatory to identify the pilots of a plane crash or a request for admission that defendants advertised in a particular magazine are "certainly less intrusive than a request to produce" numerous documents about many aspects of the aircraft at issue. *Id.* at 545. Third, the Court cited a ***draft*** revision of the Restatement of Foreign Relations Law of the United States, noting it suggested the "nature of the concerns that guide a comity analysis." *Id.* at 544 n.28.

B. The Scrutiny Suggested by the Supreme Court Would Result in Less Conflict Between the Federal Discovery Rules and Foreign Law.

The Restatement of Foreign Relations Law of the United States (Third) relied upon by the district court below should be interpreted with the care suggested by the Supreme Court. Section 442 of that Restatement provides that

> In deciding whether to issue an order directing production of information located abroad, and in framing such an order, a court or agency in the United States should take into account the importance to the investigation or litigation of the documents or other information requested; the degree of specificity of the request; ***whether the information originated in the United States***; the availability of alternative means of securing the information; and ***the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located.***

Restatement (Third) of Foreign Relations Law of the U.S. § 442(1)(c) (1987) (emphasis added).

Courts applying § 442 should do so in a fashion that gives due regard for the operation of foreign law and the reality that imposing obligations conflicting with foreign law imposes inconsistent obligations on litigants, including members of the international banking community. A contrasting ruling, however, avoids this conflict. Finding discovery unwarranted in the face of a potential conflict with foreign disclosure avoids the undesirable outcome of imposing obligations inconsistent with those imposed by foreign law.

Two important points should not be lost in a Restatement analysis. First, § 442 of the Restatement looks to "whether the information originated in the United States." Often, the information sought is information that (1) is created and stored in foreign countries, (2) by foreign banks and or financial institutions, and (3) concerning foreign accounts or transactions. Comity concerns are especially weighty under these situations. Second, § 442 looks to whether "noncompliance with the request would undermine important interests of the United States" in comparison with foreign interests. Courts evaluate those U.S. interests based upon nature of the substantive law that underlies the plaintiffs' claims. The strength of those U.S. interests, however, is dependent upon the strength of those underlying claims. Where those claims merely rest on unsubstantiated allegations in a pleading, the U.S. interests are unsupported and thus relatively weak compared to the foreign interests at stake. The problem with the analysis below is that the district court did not look to the foundation for the asserted U.S. interests and instead credited the interests as weighty because of the (undisputable) seriousness of laws underpinning the claims. *Linde v. Arab Bank, PLC*, 463 F. Supp. 2d 310, 315 (E.D.N.Y. 2006). Such an approach fails to strike a balance between U.S. and foreign interests and readily creates irreconcilable conflicts between U.S. and foreign law. Moreover, it is not in keeping with the balance suggested by the Supreme Court, the Restatement, and other circuit courts.

C. Other Courts Have Carefully Weighed Foreign Interests Before Compelling Discovery In Violation Of Foreign Law.

The approach to resolving potential legal conflicts over discovery requests is also in keeping with the decisions of this Court and other circuits. In *Ings v. Ferguson*, debtors who wished to challenge the fairness of a proposed settlement sought records located in Canada from the Bank of Nova Scotia and of the Toronto-Dominion Bank. 282 F.2d 149, 150 (2d Cir. 1960). Those banks moved to quash the subpoenas. The Second Circuit acknowledged that the requests were based on "[t]he detailed allegations of the Trustee," *id.*, but refused to compel production in light of "the problem inherent in the issuance of subpoenas having extra-territorial effect." *Id.* at 151. The Court stated that under "fundamental principles of international comity," courts "should not take such action as may cause a violation of the laws of a friendly neighbor." *Id.* at 152.

The Second Circuit similarly showed restraint in *Trade Development Bank v. Continental Insurance Co.*, 469 F.2d 35 (2d Cir. 1972). The plaintiff (a Swiss bank) provided numerous records indicating that it had incurred an insured loss and won a judgment against the insurer. *Id.* at 39. The defendant insurer appealed the lower court's refusal to order the plaintiff to produce documents identifying customer names on records that were identified only by number. The Second Circuit concurred with the district court's decision and refused to order production

of documents identifying customers of the Swiss bank when Swiss law prohibited disclosure and "the identity was not essential to the issue on trial." *Id.* at 40.

Other circuits similarly have declined to order production of documents located outside the U.S. After the Supreme Court vacated and remanded *In re Anschuetz & Co., GmbH* following its holding in *Société Nationale*, the Fifth Circuit directed the district court to determine whether "the Hague Convention proceedings [were] appropriate after 'scrutiny … of the particular facts, sovereign interests, and likelihood that resort to these procedures would prove effective.'" 838 F.2d 1362, 1364 (5th Cir. 1988) (quoting *Société Nationale*, 482 U.S. 522 at 524). The court noted that "sensitive interests of sovereign powers [were] involved and that it would be a serious mistake for the district court not to respect properly such interests." *In re Anschuetz*, 838 F.2d at 1364. The court ordered the district court to "consider, with due caution, that many foreign countries, particularly civil law countries, do not subscribe to our open-ended views regarding pretrial discovery." *Id*.

The Tenth Circuit also carefully considered the relative weight of foreign interests in *In re Westinghouse*, 563 F.2d 992 (10th Cir. 1977). The defendant in that case requested from a U.S. corporation documents that were located in the corporation's Canadian offices. *Id.* at 994. The defendant based its request on the theory that the documents would prove that its breach of contract was the result of

a global cartel that artificially inflated the price of uranium. *Id.* The Tenth Circuit, noting the "dilemma [in] the accommodation of the principles of the law of the forum with the concepts of due process and international comity," applied the "balancing approach" and found that the objecting company had attempted to comply with the production requests. *Id.* at 997. The court thus vacated an order of contempt and sanctions, finding that "Canada has a legitimate 'national interest'" in how records located in Canada "will be made available to interested outsiders." *Id.* at 998.

Each of these cases bespeaks a balance that stands in contrast to disregarding foreign restrictions on the basis of unsubstantiated allegations. A more careful balance avoids placing parties responding to discovery requests in the regrettable position of having to choose which controlling law to obey.

CONCLUSION

For the reasons set forth above, this Court should clarify that disclosure in violation of foreign laws should only be ordered where the U.S. interest is rooted in more than unsubstantiated allegations in a plaintiff's complaint. This approach is in keeping with the principle of comity and the care required in balancing the competing laws of independent sovereign nations. Moreover, it reduces the likelihood that litigants will have to make the dangerous choice of having to decide which sovereign's rules to obey.

DATE: November 5, 2010

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH F.R.A.P. 32

I, Angela E. Stoner, hereby certify pursuant to F.R.A.P. 32(a)(7) that, according to the word-count feature of Microsoft Word 2007, the foregoing appellate brief contains 4507 words (exclusive of the Rule 26.1 statement of corporate interest, table of contents, table of authorities, and this certificate) and therefore complies with the 7,000 word limit for *amicus* briefs in the Federal Rules of Appellate Procedure for the Second Circuit.

Dated: November 5, 2010

/s/_____
Angela E. Stoner