RECENT DEVELOPMENTS

EIG Energy Fund XIV, L.P. v. Petroleo Brasileiro, S.A.: The FSIA Continues to Narrow

I. OVERVIEW

Investors around the globe salivated at the news of Brazilian state-owned oil company, Petrobras, discovering an estimated 50 billion barrels of undersea oil off the coast of Brazil in 2006.[1] Petrobras quickly formed a plan to extract the oil from these reserves and named the business venture Sete Brasil Participações, S.A. (Sete).[2] As part of this venture, Petrobras planned to build twenty-eight specialized "drill ships" at a cost of $700 million each.[3] Sete called for an equity investment of around 7.9 billion Brazilian reais with 4.6% coming from Petrobras and the remaining cost to be debt-financed via third-party lenders.[4] Brazilian law provides tax incentives to facilitate foreign investment through Fundos de Investimento em Participações (FIPs), and Petrobras created FIP Sondas to encourage foreign investment into the Sete project.[5] Petrobras and Sete specifically targeted investors in the United States, which included EIG Management Company (EIG), a Washington, D.C.-based private equity fund.[6] The two companies distributed presentations about the venture to investors in the United States and met with EIG executives in Houston and Washington,

1. EIG Energy Fund XIV, L.P. v. Petroleo Brasileiro, S.A., 894 F.3d 339, 342 (D.C. Cir. 2018).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*

D.C.[7] During these meetings, executives of Petrobras and Sete described the revenue prospects of the venture as producing $90 billion over the next twenty years.[8] EIG invested $221 million in FIP Sondas between August 2012 and May 2013 from eight funds under its management.[9] While six of the eight funds were located in Delaware, the other two funds were located in the Cayman Islands, which Brazil recognized as a tax haven.[10] As a result of the Cayman Islands' tax haven status, under Brazilian law investors are not eligible for the tax incentives provided by FIP investments.[11] Consequently, EIG formed EIG Sete Parent SARL (EIG Sete Parent), which formed EIG SETE Holdings SARL (EIG Sete Holdings), both incorporated in Luxembourg.[12] Thus, EIG's investment in Sete flowed from EIG's eight funds, to EIG Sete Parent, then to EIG Sete Holdings, next to FIP Sondas, and finally to Sete itself.[13]

In 2014, Brazilian prosecutors uncovered an extensive corruption scheme in the Brazilian government that involved both Petrobras and Sete.[14] This elaborate corruption plot involved bribery and kickback schemes, which implicated some of the executives that had met extensively with EIG involving their investment in Sete.[15] After these executives testified before the Brazilian Congress explaining how they targeted capital markets in the United States, lenders quickly withdrew support for the drill ship project, which was highly debt-financed by design.[16] As a result of this loss of financing, Sete became insolvent and declared bankruptcy, making EIG's shares in Sete worthless.[17] EIG filed suit against Petrobras and other defendants in district court alleging fraud, aiding and abetting fraud, and civil conspiracy to commit fraud.[18]

7. *Id.*
8. *Id.*
9. *Id.* at 342-43.
10. *Id.* at 343.
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*

Petrobras filed a motion to dismiss for lack of subject matter jurisdiction on the grounds that, as an instrumentality of the Brazilian state, Petrobras is immune from suit under the Foreign Sovereign Immunities Act (FSIA).[19] The district court denied the motion to dismiss citing the FSIA's commercial activity exception.[20] Although EIG argued that all three clauses of the commercial activity exception applied, the district court relied on the third clause only, which grants jurisdiction based on claims that occur outside the United States involving commercial activity that causes a direct effect within the United States.[21] Petrobras appealed the denial of its motion to dismiss to the federal appellate level.[22] The United States Court of Appeals for the District of Columbia Circuit *held* that Petrobras was not immune from EIG's suit because Petrobras's commercial activity in Brazil caused a direct effect in the United States. *EIG Energy Fund XIV, L.P. v. Petroleo Brasileiro, S.A.*, 894 F.3d 339, 349 (D.C. Cir. 2018).

II. BACKGROUND

The FSIA is the only method for obtaining jurisdiction over foreign sovereign countries in U.S. courts.[23] According to the Act, foreign states have a rebuttable presumption of immunity from U.S. courts.[24] In order for a U.S. court to have subject matter jurisdiction over a claim against a foreign state, a specific exception provided in the Act must apply to the defendant's case.[25] The FSIA takes a "restrictive view" with respect to sovereign immunity,[26] and consequently, "the defendant bears the burden of proving that the plaintiff's allegations do not bring its case within a statutory exception to immunity."[27] The standard for evaluating the legal sufficiency of a plaintiff's jurisdictional claims is that "dismissal is warranted if no plausible inferences can be drawn from the facts alleged that, if proven, would provide grounds for relief."[28]

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19. *Id.*
20. *Id.* at 343-44.
21. *Id.* at 344.
22. *Id.*
23. Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 443 (1989).
24. Saudi Arabia v. Nelson, 507 U.S. 349, 355 (1993).
25. *Id.*
26. Lawrence A. Collins, *The Effectiveness of the Restrictive Theory of Sovereign Immunity*, 4 COLUM. J. TRANSNAT'L L. 119, 119 (1965).
27. Phoenix Consulting Inc. v. Republic of Angola, 216 F.3d 36, 40 (D.C. Cir. 2000).
28. Price v. Socialist People's Libyan Arab Jamahiriya, 294 F.3d 82, 93 (D.C. Cir. 2002).

A. Commercial Activity Exception

One significant exception to the FSIA is the "commercial activity" exception, which prohibits a foreign state from being immune from suit in any case in which the state caused a "direct effect in the United States."[29] The United States Supreme Court held in *Republic of Argentina v. Weltover* that to invoke the commercial activity exception, a plaintiff must satisfy three elements of the exception to the FSIA.[30] First, the lawsuit must be based upon an act that occurs outside the United States.[31] Second, the act must occur "in connection with a commercial activity" of the defendant outside the United States.[32] Third, the act must "cause[] a direct effect in the United States."[33]

B. Commercial Activity Exception and Restrictive Theory of the FSIA

Following the State Department endorsing a "restrictive theory" of foreign sovereign immunity in 1952,[34] lower courts have consistently held that foreign sovereigns were not immune from the jurisdiction of American courts where a case arose from a "purely commercial transaction."[35] In *Alfred Dunhill of London, Inc. v. Republic of Cuba*, a plurality opinion explained that the restrictive theory of foreign sovereign immunity would not bar a suit based on a foreign-state defendant's participation in the open market in the same way a private citizen or corporation would participate.[36] Based upon this interpretation of the restrictive theory, in *Weltover*, the Court expanded the scope of the description to say that "when a foreign government acts, not as a regulator of a market, but in the manner of a private player within it, the foreign sovereign's actions are 'commercial' within the meaning of the FSIA."[37] Further, the relevant inquiry is to the actions by which a defendant takes part in "trade and traffic or commerce."[38] For example, under this standard enacting regulations regarding foreign currency exchange is an action of a

29. 28 U.S.C. § 1605(a)(2) (2016).
30. *Id.* § 1605(a)(2); Republic of Arg. v. Weltover, Inc., 504 U.S. 607, 611 (1992).
31. *Weltover*, 504 U.S. at 611.
32. *Id.*
33. *Id.*
34. Collins, *supra* note 26. "Restrictive theory" of foreign sovereign immunity means that the immunity of a sovereign is recognized with respect to public acts of the state, but not with respect to private acts. *Id.*
35. *See Weltover*, 504 U.S. at 613.
36. Alfred Dunhill of London, Inc. v. Republic of Cuba, 425 U.S. 682, 698 (1976).
37. *Weltover*, 504 U.S. at 614.
38. *Id.*

sovereign entity because a private party cannot exercise such authority, whereas a contract to purchase military supplies is commercial activity because private companies can similarly perform this act.[39] Additionally, the Supreme Court held in *Dole Food Co. v. Patrickson* that a corporation becomes an instrumentality of a foreign state for FSIA purposes when a foreign state owns a majority of the corporation's shares.[40]

C. Direct Effect Under the FSIA

Under the FSIA, a "direct effect" is defined as "an immediate consequence of the defendant's unlawful activity."[41] While there is no requirement that the effect be "substantial" or "foreseeable," it also may not be based upon "purely trivial effects" in the United States.[42] The United States Court of Appeals for the District of Columbia held that in order for an effect to be "direct" there cannot be an intervening element, but rather the effect must occur in a straight line without "deviation or interruption."[43] Other circuits have taken similar positions while not adopting this express language.[44]

One inquiry as to the direct effect clause of the FSIA is the type of causal connection between the defendant and the plaintiff's harm required to bring suit.[45] The United States Circuit for the District of Columbia has adopted a proximate causation standard and rejected "but for" causation with respect to claims brought under the FSIA.[46] The adoption of proximate causation is based on the lack of a textual justification for "but for" causation and the Supreme Court's interpretation of "caused by" to

39. *Id.*
40. Dole Food Co. v. Patrickson, 538 U.S. 468, 477 (2003).
41. Weltover, Inc. v. Republic of Arg., 941 F.2d 145, 152 (2d Cir. 1991).
42. *Id.*
43. Bell Helicopter Textron, Inc. v. Islamic Republic of Iran, 734 F.3d 1175, 1184 (D.C. Cir. 2013); Princz v. Fed. Republic of Ger., 26 F.3d 1166, 1172 (D.C. Cir. 1994).
44. *See* United World Trade, Inc. v. Mangyshlakneft Oil Prod. Ass'n, 33 F.3d 1332, 1237-38 (10th Cir. 1994) (holding that breach of contract involving transfer of oil from Kazakhstan to Sicily had no "direct effect" in the United States because bank transfers are "tangentially related" to performance of contract); Virtual Countries, Inc. v. Republic of S. Afr., 300 F.3d 230, 236-37 (2d Cir. 2002) (holding that investors not failing to extend capital on account of the defendant's press release did not constitute a "direct effect").
45. Kilburn v. Socialist People's Libyan Arab Jamahiriya, 376 F.3d 1123, 1128 (D.C. Cir. 2004).
46. *Id.*

mean "proximate cause."[47] Other circuits have remained silent as to the level of causal connection they require to bring suit.[48]

The "locus" of a tort or breach of contract, meaning the location where the action originally takes place, is another aspect of inquiry under the "direct effect" element of the commercial activity exception.[49] The United States Court of Appeals for the Second Circuit held in *Antares Aircraft, L.P. v. Federal Republic of Nigeria* that the location where a tort occurs is analogous to the place of the performance of a contract, basing this upon the *Weltover* Court's focus on the place of a contract's performance.[50] Other circuits have also adopted this position with regard to the locus inquiry.[51] In *Odhiambo v. Republic of Kenya,* the United States Court of Appeals for the District of Columbia rejected FSIA jurisdiction in the case of a contract without a place of performance clause, meaning that a plaintiff cannot create FSIA jurisdiction by choosing to execute the contract in the United States.[52] However, while the inquiry as to the locus of an action is relevant when evaluating direct effect, it is only one factor among others by which courts have evaluated direct effect.[53]

III. THE COURT'S DECISION

In the noted case, the United States Court of Appeals for the District of Columbia focused its analysis on the "cause[d] a direct effect" element of the three-part test for the commercial activity exception to the FSIA from the Supreme Court's *Weltover* decision.[54] In reaching its analysis of this element, the court first held that EIG made a prima facie case for jurisdiction when it showed that Petrobras specifically targeted U.S. investors, concealed ongoing fraud at Petrobras and Sete, and that money invested in Sete was used to pay bribes and kickbacks.[55] Since EIG

47. *Id.*; Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 536-38 (1995).

48. *See, e.g.*, Voest-Alpine Trading v. Bank of China, 142 F.3d 887, 892 (5th Cir. 1998); *Virtual Countries*, 300 F.3d at 236-37.

49. Bell Helicopter Textron, Inc. v. Islamic Republic of Iran, 734 F.3d 1175, 1184 (D.C. Cir. 2013).

50. *See* Antares Aircraft, L.P. v. Fed. Republic of Nigeria, 999 F.2d 33, 36 (2d Cir. 1993).

51. *See, e.g.*, *id.*; *Bell Helicopter*, 734 F.3d at 1184; Samco Global Arms, Inc. v. Arita, 395 F.3d 1212, 1217 (11th Cir. 2005).

52. Odhiambo v. Republic of Kenya, 746 F.3d 31, 40-41 (D.C. Cir. 2014).

53. *See Bell Helicopter*, 734 F.3d at 1184.

54. *See* 28 U.S.C. § 1605(a)(2) (2016); EIG Energy Fund XIV, L.P. v. Petroleo Brasileiro, S.A., 894 F.3d 339, 345 (D.C. Cir. 2018); Republic of Arg. v. Weltover, Inc., 504 U.S. 607, 611 (1992).

55. *EIG Energy Fund*, 894 F.3d at 345.

sufficiently made a prima facie case, Petrobras bore the burden of establishing an affirmative defense to immunity, to which the defendant raised a two-part defense.[56] In the first part, Petrobras argued that the third-party lenders' decision not to lend to Sete "broke the chain of causation" linking them to the injury inflicted on EIG.[57] The court declined this invitation to accept a highly restrictive causation requirement, citing its prior decision in *Kilburn v. Socialist People's Libyan Arab Jamahiriya*.[58] In the second part, Petrobras argued that the fraud did not cause a direct effect in the United States because EIG's injury did not occur in the United States since the fund funneled its money through subsidiaries in Luxembourg.[59] The court decided to not give special consideration to the "locus" of the tort and focused instead on the site of the direct effects of the tort.[60]

The court first addressed Petrobras's "chain of causation" argument, which posited that when the third-party lenders withdrew their funds and caused the project to become insolvent, the actions of these lenders was an intervening act that broke the "chain of causation" connecting Petrobras to the injury.[61] The court dismissed this argument for two reasons.[62] First, the court relied on its previous holding in *Kilburn* that rejected an argument that "but for" a third-party's action, no harm would have come to the plaintiff.[63] Instead, in *Kilburn*, the court applied a "base-line standard for proximate cause" because in such a case, a different application could absolve both parties from liability to the plaintiff.[64] Second, the court explained that the lenders withdrew funding for the same reason that EIG's investment became worthless, which was because of Petrobras's fraud.[65] Thus, the project becoming worthless and the lenders withdrawing funds were both actually results of the same cause.[66]

After the "chain of causation" argument, the court addressed Petrobras's second argument that because EIG created corporate

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56. *Id.*
57. *Id.* at 345-46.
58. *Id.* at 346; Kilburn v. Socialist People's Libyan Arab Jamahiriya, 376 F.3d 1123, 1129 (D.C. Cir. 2004).
59. *EIG Energy Fund*, 894 F.3d at 345.
60. *Id.* at 347.
61. *Id.* at 345-46.
62. *Id.* at 345.
63. *Id.* at 346.
64. *Id.*; Kilburn v. Socialist People's Libyan Arab Jamahiriya, 376 F.3d 1123, 1129 (D.C. Cir. 2004).
65. *Id.* at 346.
66. *Id.*

subsidiaries in Luxembourg to funnel its investment to the Sete project, the effect in the United States was not direct.[67] While the court acknowledged that the locus of a tort is one factor in determining whether or not a tort causes a direct effect, no court has held that a foreign locus means that there is no direct effect in the United States.[68] The court dismissed the defendant's reliance on *Antares Aircraft* because while the Second Circuit analogized the locus of a tort and the place of performance of a contract, the *Antares Aircraft* court said that designating the United States as a place of performance sufficiently creates jurisdiction under the FSIA, not that U.S. jurisdiction is defeated because a foreign location is the place of performance.[69] Additionally, the court dismissed Petrobras's reliance on D.C. Circuit contract cases, which did not create FSIA jurisdiction because EIG's argument is not based on the place of performance of the contract, but rather that Petrobras fraudulently induced EIG into the contract.[70]

However, the court next assumed, *arguendo*, that Luxembourg was the locus of the alleged fault.[71] The court reframed Petrobras's theory, explaining that if EIG was injured, EIG would have "booked the loss" from the investment in Luxembourg, and thus the loss would be only indirectly felt in the United States.[72] The court dismissed this argument for three reasons.[73] First, the court explained that the Supreme Court's holding in *Dole Food Co. v. Patrickson,* that a corporation is an instrumentality of a state only if the state owns a majority of the corporation's shares, was designed to narrow the scope of foreign-state immunity.[74] However, Petrobras was asking the court to limit what entities can be FSIA plaintiffs, broadening the scope of foreign state immunity, which the court declined to do.[75] Second, Petrobras's focus on the Luxembourg subsidiaries compelled recognizing an identity between corporate citizenship and the locus of an investment loss, which the

67. *Id.* at 347.
68. *Id.*
69. *See id.* at 347-48; Antares Aircraft, L.P. v. Fed. Republic of Nigeria, 999 F.2d 33, 36 (2d Cir. 1993).
70. *See* Bell Helicopter Textron, Inc. v. Islamic Republic of Iran, 734 F.3d 1175, 1184 (D.C. Cir. 2013); Odhiambo v. Republic of Kenya, 746 F.3d 31, 42-43 (D.C. Cir. 2014).
71. EIG Energy Fund XIV, L.P. v. Petroleo Brasileiro, S.A., 894 F.3d 339, 348 (D.C. Cir. 2018).
72. *Id.* at 348.
73. *Id.*
74. *Id.* at 348-49; Dole Food Co. v. Patrickson, 538 U.S. 468, 474 (2003).
75. *EIG Energy Fund*, 894 F.3d at 349; Republic of Argentina v. Weltover, Inc., 504 U.S. 607, 619 (1992).

Supreme Court expressly rejected in *Weltover*.[76] Third, while EIG may have "booked the loss" in Luxembourg, accounting standards would require the company to have also booked a loss for the same amount in the United States.[77] Additionally, in *Weltover,* the Supreme Court allowed FSIA jurisdiction when the only connection between the defendant and the United States was that money should have been delivered to a bank in New York for deposit.[78]

The dissent in the noted case based its critique of the majority opinion upon the meaning of "direct effects."[79] The dissenting opinion explained that a basic cannon of statutory interpretation is that "a statute should be construed to give effect to all its provisions"[80] and that the majority's lengthy explanation of cause and effect did not change the fact that the investments went through three intermediaries before reaching the United States.[81] Additionally, the dissent added that while the majority is correct that *Odhiambo* and *Antares Aircraft* do not mandate rejection of FSIA jurisdiction, neither case established a direct effect.[82]

IV. ANALYSIS

The noted case was a logical step forward in narrowing the scope of the FSIA.[83] However, while the court's analysis of the locus of a tort or breach of contract on FSIA jurisdiction was sound, it was overly complex and weakened as a result of its complexity.[84] Furthermore, the court did not need to take this overly complex route and should have relied on the *Weltover* decision for the locus analysis.[85] Overall, the court's holdings reflected the erosion of FSIA immunity since the State Department's adoption of the restrictive theory in 1952 and how the *Weltover* Court's elemental approach enabled courts to continually erode the scope of the FSIA.[86]

The court's holding that a foreign locus does not mean that there was no direct effect was sound, but its reliance on *Bell Helicopter* was

76. *EIG Energy Fund*, 894 F.3d at 349.
77. *Id.*
78. *Id.*; *Weltover*, 504 U.S. at 619.
79. *See EIG Energy Fund*, 894 F.3d at 350.
80. Corley v. United States, 129 S. Ct. 1558, 1560 (2009).
81. *EIG Energy Fund*, 894 F.3d at 345.
82. *Id.* at 350.
83. *See id.* at 345.
84. *See id.* at 347.
85. *See* Republic of Argentina v. Weltover, Inc., 504 U.S. 607, 619 (1992).
86. *See id.* at 611; Collins, *supra* note 26.

misaligned.[87] While the court wanted to take a moderate approach and declined to answer the question of whether a locus in the United States necessarily established jurisdiction under the FSIA, its reliance on *Bell Helicopter* to reach this conclusion was not so moderate.[88] The court in *Bell Helicopter* analyzed the locus argument through the lens of the Second Circuit's *Antares Aircraft* holding that when the tort began and ended in a foreign country, and the only tie to the United States was the citizenship of the plaintiff, then there was not a direct effect.[89] The *Bell Helicopter* court never explicitly allowed a tort or breach of contract with foreign locus to have FSIA jurisdiction, and by making this assertion the court unnecessarily complicated the locus issue.[90]

The court's holding regarding a foreign locus more closely aligns with the *Weltover* decision.[91] While the court hints at this proposition when giving its *arguendo* analysis, it does not explicitly say so.[92] In the *Weltover* decision, the Court did not address the locus issue; however, the locus still implicitly existed in a foreign country because the decision to reschedule payments by the sovereign issuer of bonds occurred in that country's territory.[93] As a result of that breach of contract, with its foreign locus, plaintiffs with bank accounts in the United States did not receive their scheduled payments.[94] Thus, the breach of contract, with its foreign locus, had a direct effect in the United States.[95] *Weltover* more closely aligns with the noted case in terms of foreign locus analysis, and the court overcomplicated its holding by relying on *Bell Helicopter*.[96]

Finally, the court's holdings narrowed the scope of FSIA immunity, which reflects the broader trend in cases that have continually eroded FSIA immunity since the Department of State adopted a "restrictive theory" of foreign sovereign immunity in 1952.[97] The adoption of the restrictive theory of foreign sovereign immunity was a response to the decline of

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87. *See EIG Energy Fund*, 894 F.3d at 347; Bell Helicopter Textron, Inc. v. Islamic Republic of Iran, 734 F.3d 1175, 1184 (D.C. Cir. 2013).

88. *See EIG Energy Fund*, 894 F.3d at 347; *Bell Helicopter*, 734 F.3d at 1184.

89. *See Bell Helicopter*, 734 F.3d at 1184; Antares Aircraft, L.P. v. Fed. Republic of Nigeria, 999 F.2d 33, 34 (2d Cir. 1993).

90. *See Bell Helicopter*, 734 F.3d at 1184.

91. *See EIG Energy Fund*, 894 F.3d at 347; *see Weltover*, 504 U.S. at 619.

92. *See EIG Energy Fund*, 894 F.3d at 349; *see Weltover*, 504 U.S. at 619.

93. *See Weltover*, 504 U.S. at 619.

94. *Id.*

95. *Id.*

96. *See EIG Energy Fund*, 894 F.3d at 348; *see Weltover*, 504 U.S. at 619; Bell Helicopter Textron, Inc. v. Islamic Republic of Iran, 734 F.3d 1175, 1184 (D.C. Cir. 2013).

97. *See Weltover*, 504 U.S. at 613; Collins, *supra* note 26.

laissez-faire economic theories in the 1950s, and throughout the 20th century courts have continued a general trend of narrowing the FSIA, presumably on account of this restrictive theory.[98] The Supreme Court's decision in *Weltover* structured the commercial activity exception to the FSIA and thus set into place a framework for the federal circuits to erode the scope of the FSIA.[99] The noted case demonstrates how the federal circuits continue to erode FSIA's scope by expanding the elements from *Weltover*.[100] The court in the noted case could effectively reject the offer by Petrobras to narrow the scope through the chain of causation because it could focus the elemental structure from *Weltover*.[101] Similarly, by focusing on the "direct effect" element and the foreign locus analysis, the court can more easily open the scope of the exception to hold that a foreign locus does not bar a direct effect in the United States.[102] Additionally, while the court declined to answer the question of whether a locus in the United States was sufficient to establish FSIA jurisdiction, the language of the court seemed to hint that it believed that it was sufficient.[103]

While the decision in the noted case was a logical step forward in the trend of increasingly allowing exceptions to the FSIA, the court overcomplicated the analysis by relying on its own precedent in *Bell Helicopter* instead of the Supreme Court's *Weltover* decision.[104] However, the court's analysis of the locus issue was important, because precedent on the issue is not entirely settled.[105] Additionally, the noted case demonstrates how the federal circuits have continually eroded the FSIA as a result of the *Weltover* decision.[106]

V. CONCLUSION

From a global economic policy perspective, the court's expansion of the commercial activity exception to the FSIA will become more relevant as globalization trends continue. Additionally, with the economic rise of countries like China that have many state-owned entities, expanding the

98. *Weltover*, 504 U.S. at 613; Collins, *supra* note 26; *see* Dole Food Co. v. Patrickson, 538 U.S. 468, 474 (2003).

99. *See Weltover*, 504 U.S. at 611.

100. *See id.*

101. *See* EIG Energy Fund XIV, L.P. v. Petroleo Brasileiro, S.A., 894 F.3d 339, 345 (D.C. Cir. 2018).

102. *See id.*

103. *See id.* at 347.

104. *See id.* at 348; *Weltover*, 504 U.S. at 619; Bell Helicopter Textron, Inc. v. Islamic Republic of Iran, 734 F.3d 1175, 1184 (D.C. Cir. 2013).

105. *See EIG Energy Fund*, 894 F.3d at 347.

106. *See Weltover*, 504 U.S. at 620.

scope of FSIA immunity should help protect American businesses and individuals moving forward. In the current political climate and with possible trade wars on the horizon, there will likely be more conflicts between foreign states conducting commercial activity and individuals and businesses in the United States. An interconnected, globalized economy has already arrived, for better or for worse, and as we move forward governments will need to find a way to regulate international commerce. Additionally, in the United States, with the rise of enormous Internet-based corporations with global operations like Amazon and Google, litigation involving the commercial activity exception to the FSIA will likely increase, and with this increased litigation, the scope of the FSIA will continue to narrow. While the restrictive theory of foreign immunity may have been adopted in the 1950s in response to a decline in laissez-faire economic trends, it is no less relevant in today's ever-changing global economic and political climate.

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