

McComas, de la Pe'a in Law360: Jurisdiction in Cross-Border Disputes

May 12, 2017 Debbie McComas, Alberto de la Peña

PRACTICES Appellate, Mexico, International, Litigation

In its coverage of three cases involving the question of Texas court jurisdiction over Mexican entities and individuals, *Law360* quoted Haynes Boone Partners [Debbie McComas](#) and [Alberto de la Peña](#).

The cases, argued before the Texas Fifth Court of Appeals in Dallas in May, were expected to help clarify “when plaintiffs in cross-border disputes can access the U.S. legal system for tort claims and other legal remedies not always available in Mexico,” *Law360* [reported](#).

According to the story, two of the cases involved an insurance dispute arising from an explosion at a candy factory in Mexico, with Elamex SA de CV claiming that it was wrongfully denied coverage under an excess insurance policy and that its insurance brokers committed professional negligence and procured unauthorized insurance. The third case involved defamation claims brought by Celanese Corp. against a Mexico resident and two Mexican law firms accused of orchestrating a smear campaign.

McComas said more rulings on the issue would help clarify when foreign companies can be sued in Texas, *Law360* reported.

“The trend in the court systems is bringing us clarity,” McComas said. “Clients have better understanding and confidence when they do business cross-border to understand the scope of the risks they’re taking. That’s a good thing.”

McComas said the U.S. Supreme Court’s 2014 decision in *Daimler v. Bauman* set clear guidelines for when American courts can exercise general jurisdiction over foreign companies, while other courts continue to parse the boundaries of when they have specific jurisdiction over a foreign entity or individual — for example, if the company entered Texas to carry out a specific deal or sold products to a Texas client.

In general, cross-border clients consider jurisdiction a serious issue, both at the outset of cross-border deals and especially when disputes arise. They want to be clear on what the rules are and which country they might face potential claims in, McComas said.

Plaintiffs commonly want to bring tort suits in U.S. courts rather than in Mexico because of fundamental differences in the two countries’ legal systems, she said. Mexico and most Latin American countries are based on code or civil law, while the U.S. legal system is rooted in common law and recognizes different causes of action — and the potential for punitive damages — that make it a desirable venue. ...

De la Peña said international arbitration is a great option when contractual disputes arise. But deals often spur less-foreseeable disputes, like related tort claims or other extra-contractual claims that the parties haven’t agreed in advance where to handle them and what law applies.

“The concern is more on the operational side,” de la Peña said. “That’s where you need to think about structuring investment vehicles to locate the risk properly.”

Part of setting up cross-border transactions is making sure foreign companies are operating through the appropriate corporate structure, he said. That might mean setting up a subsidiary or holding company that handles all operations in a given country, to isolate risk to the company that’s actually doing business there, he said.

The firm advises clients to do business in a jurisdiction through an entity it is comfortable having sued there, McComas said.

“It’s not escaping liability,” she said. “It’s defining where you’re willing to do business.” ...

Excerpted from *Law360*. To read the full article, click [here](#).