NEW YORK LAW SCHOOL

NYLS Journal of International and Comparative Law

Volume 5 | Number 1 Article 8

1983

CTI-Container Leasing Corp v. Uiterwyck Corp

Geraldine Matise

COMMENTS

JURISDICTION OF THIRD PARTY CLAIM AGAINST IRAN—FINALITY OF STAY ORDER—SEVERABILITY—*CTI-Container Leasing Corp. v. Uiterwyk Corp.* — By Executive Order,[1] President Ronald Reagan suspended claims of United States nationals against Iran and its instrumentalities which arose out of the Islamic Revolution in Iran and the detention of fifty-two American nationals in 1979.[2] Under the agreements securing the release of the hostages,[3] all such claims are within the jurisdiction of the Iran-United States Claims Tribunal[4] and are subject to binding arbitration.[5] The suspension of these claims in United States courts has posed procedural problems regarding other principal claims between United States corporations in which Iranian nationals could be impleaded as third party defendants.

In *CTI-Container Leasing Corp. v. Uiterwyk Corp.*,[6] the United States Court of Appeals for the Eleventh Circuit vacated an order by the United States District Court for the Middle District of Florida to stay both the main claim involving two United States corporations and a third party claim against Iran pending a determination by the Claims Tribunal of its jurisdiction over the third party claim.[7] After ruling

---

1. Exec. Order No. 12,294, 46 Fed. Reg. 14,111 (1981).

2. *Id.* at 14,111.

3. Two separate agreements were involved in implementing the hostages' release. The Declaration of the Government of the Democratic and Popular Republic of Algeria, Jan. 19, 1981, *reprinted in*, 20 I.L.M. 224 (1981) [hereinafter cited as Declaration of Algeria] outlined the purposes and basic terms of the settlement, and the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, Jan. 19, 1981, *reprinted in*, 20 I.L.M. 230 (1981) [hereinafter cited as Declaration of Settlement of Claims] provided for the establishment of an international arbitration tribunal.

4. The Iran-United States Claims Tribunal has jurisdiction over all claims justiciable under the terms of the Declaration of Settlement of Claims, *supra* note 3, art. II. The Tribunal is to be composed of nine (or another multiple of three, if so agreed) members, one-third chosen by Iran, one-third by the United States, and one-third mutually agreed upon and from whom the president of the Tribunal will be chosen. *Id.* art. III, para. 1. All decisions and awards of the Tribunal are final and binding and are enforceable in the courts of any nation. *Id.* art. IV, paras. 1, 3.

5. Declaration of Settlement of Claims, *supra* note 3, at 232.

6. 685 F.2d 1284 (11th Cir. 1982), *cert. denied*, 459 U.S. 1173 (1983).

7. *Id.*

that the stay order was a final order subject to appellate review,[8] the court of appeals held that the district court had abused its discretion in granting a stay of the entire proceeding and that the trial court should proceed with the main claim and sever and stay only the third party claim.[9]

On January 19, 1981, the United States entered into several agreements with Iran to secure the release of fifty-two Americans held hostage in the United States embassy in Tehran.[10] These agreements provided for: (1) the suspension of United States courts' jurisdiction over claims against Iran and its instrumentalities arising out of the Islamic Revolution in Iran and the detention of the American hostages;[11] (2) the submission of such claims to binding arbitration[12] and (3) the release and transfer of Iranian assets held in the United States.[13]

The agreement to suspend claims covered suits between American and Iranian nationals pending in United States courts, all attachments and judgments, and any new litigation based on such claims.[14] The United States and Iran agreed to settle these claims by binding arbitration[15] through an international tribunal, the Iran-United States Claims Tribunal.[16] The Claims Tribunal has direct jurisdiction over claims and counterclaims between United States and Iranian nationals[17] in disputes exceeding $250,000.[18] Expressly exempted from the

---

8. *Id.* at 1288.

9. *Id.* at 1290.

10. Declaration of Algeria and Declaration of Settlement of Claims, *supra* note 3. A third document outlined the specific steps to be taken by both governments regarding the release and transfer of Iranian assets in the United States. Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with Respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria, Jan. 19, 1981, *reprinted in* 20 I.L.M. 229 (1981) [hereinafter cited as Undertakings of the United States and Iran].

11. Declaration of Algeria, *supra* note 3, para. 11, at 227.

12. *Id.* Gen. Principles (B), at 224.

13. *Id.* Gen. Principles (A), at 225; Undertakings of United States and Iran, *supra* note 10.

14. Declaration of Algeria, *supra* note 3, General Principles (B), at 224.

15. Declaration of Settlement of Claims, *supra* note 3. The Claims Tribunal is to follow the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) except as modified by either Iran, the United States or the Tribunal. *Id.* art. III, para. 2, at 231.

16. *Id.* art. II, para. 1, at 230.

17. *Id.* art. II, para. 1, at 230. The agreement defines "national," "claims of nationals," "Iran," and "United States." A "national" is a natural person of Iranian or United States citizenship, or a legal entity organized under the laws of either country, its states or territories, and of which at least a 50% interest is held by natural persons who are citizens of that country. "Claims of nationals" are claims continuously owned, directly or indirectly, by nationals of one of those countries, from the date the claim arose to the

18. Footnote 18 appears on page 155.

Claims Tribunal's jurisdiction are claims made under contracts which provided that Iranian courts have sole jurisdiction to settle disputes.[19]

A portion of the Iranian assets released and transferred by the United States under the agreements is to be held in escrow to satisfy awards against Iran granted by the Claims Tribunal.[20] This fund is to be replenished periodically by Iran so that a minimum balance of $500 million is maintained until all claims filed with the Claims Tribunal have been decided and all awards satisfied.[21]

The main terms of the United States-Iran agreements were implemented by former President Carter in a series of Executive Orders issued on January 19, 1981.[22] The suspension of litigation against Iran was implemented by President Reagan in Executive Order 12,294 on February 24, 1981.[23] The Executive Order provides that the United States courts' jurisdiction resumes if the Claims Tribunal determines that it does not have jurisdiction over a claim.[24] If the Claims Tribunal, however, makes a determination on the merits of a claim, that decision is a "final resolution and discharge for all purposes."[25] On July 2, 1981, the United States Supreme Court upheld the President's authority to use executive agreements to settle claims of United States nationals

---

effective date of the agreement. "Iran" and "United States" refer to the respective governments of each country, any political subdivision of that government, or entity or instrumentality controlled by it. *Id.* art. VII, at 232-33.

18. *Id.* art. III, para. 3, at 231. Claims for less than $250,000 must be presented to the Tribunal by the claimant's government. *Id.*

19. *Id.* art. II, para. 1, at 231.

20. Declaration of Algeria, *supra* note 3, para. 7, at 226. The escrow fund is held by the Central Bank of Algeria. *Id.*

21. *Id.* at 226. This arrangement varies from the usual procedure of the United States Foreign Claims Settlement Commission, under the International Claims Settlement Act of 1949, 22 U.S.C. §§ 1621-1627 (1982). The Commission hears American claims against foreign states for compensation for private property wrongfully taken when specific authorization is provided by Congress. If the Commission decides favorably on a claim and authorizes payment, the Secretary of the Treasury makes payment from special funds. These funds are derived from international agreements or from the liquidation of foreign assets held in the United States. In some instances, there is a "presettlement adjudication," and the information on the number and amount of claims is used to negotiate a settlement fund. *See generally* 1978 Foreign Claims Settlement Commission Ann. Rep. to Congress (1979).

22. Exec. Order No. 12,276, 46 Fed. Reg. 7913 (1981); Exec. Order Nos. 12,277-81, 46 Fed. Reg. 7915-24 (1981); Exec. Order No. 12,282, 46 Fed. Reg. 7925 (1981); Exec. Order No. 12,283, 46 Fed. Reg. 7927 (1981); Exec. Order No. 12,284, 46 Fed. Reg. 7929 (1981); Exec. Order No. 12,285, 46 Fed. Reg. 7931 (1981).

23. Exec. Order No. 12,294, 46 Fed. Reg. 14,111 (1981).

24. *Id.* The Executive Order also does not preclude the filing of an action after Feb. 24, 1981, in order to toll the statute of limitations. *Id.*

25. *Id.*

against a foreign state in *Dames & Moore v. Regan*.[26] The Court cited ten previous instances of claims settlement by executive agreement.[27]

In October 1980, CTI-Container Leasing Corp. (CTI), a Delaware corporation, brought suit against Uiterwyk Corp. (Uiterwyk), a Florida corporation, claiming breach of leases and alleging that Uiterwyk failed to meet its obligations as lessee.[28] CTI, a lessor of ocean carrier cargo containers, had entered into several leases for ocean cargo containers and related equipment with Uiterwyk, an alleged agent for Iran Express Lines (IEL).[29] IEL, an alleged instrumentality of Iran, transported the leased equipment to Iran and retained custody of it.[30] In February 1981, approximately one month after the Iran-United States agreements became effective, Uiterwyk moved to implead Iran and IEL, claiming that an agency relationship existed necessitating joinder of Iran and IEL as third party defendants.[31]

On June 19, 1981, the United States District Court for the Middle District of Florida stayed CTI's claim against Uiterwyk pending determination by the Claims Tribunal of its jurisdiction over Uiterwyk's claims against Iran and IEL, pursuant to Executive Order 12,294.[32]

---

26. 453 U.S. 654 (1981). The Court stated that the suspension of claims did not divest United States courts of jurisdiction but, rather, simply changed the substantive law. *Id.* at 684-85.

27. *Id.* at 680 n.9. Several of these agreements were the basis for amending the International Claims Settlement Act of 1949, allowing the Foreign Claims Settlement Commission to adjudicate claims arising under the agreements. *Id.* at 680-82. For an overview of the Commission's activity and a graphic summary of programs completed under the Act, see generally 1978 Foreign Claims Settlement Commission Ann. Rep. to Congress (1979).

Depending on the number of claims and the source of funds for payment of awards (bilateral claims agreements or liquidation of foreign national assets in the United States), most programs have taken three to five years to complete. *Id.* at 48-49. For additional information on lump-sum settlement agreements, see generally Re, *Domestic Adjudication and Lump-Sum Settlement as an Enforcement Technique*, 58 AM. SOC'Y INT'L. L. PROC. 39 (1964); Comment, *The Blocked Chinese Assets—United States Claims Problem: The Lump-Sum Settlement Solution*, 3 FORDHAM INT'L L. F. 51 (1979).

28. *CTI v. Uiterwyk*, 685 F.2d at 1285.

29. *Id.* at 1286. In NIC Leasing, Inc. v. Uiterwyk Corp., No. 81 Civ. 3866 (S.D.N.Y. Mar. 1, 1982), Uiterwyk claimed that it was a general agent for IEL, a fact well publicized in advertisements in newspapers and trade journals. Uiterwyk alleged that IEL was the only line represented by Uiterwyk which during the relevant time period traded in Japan and the Far East. *Id.* slip op. at 3 n.2.

30. *CTI v. Uiterwyk*, 685 F.2d at 1286-87.

31. *Id.* at 1286. Uiterwyk also filed separate actions against Iran and IEL in the United States District Court for the Middle District of Florida: Uiterwyk v. Iran Express Lines, No. 81-107-Civ. T.K. (M.D. Fla., filed Feb. 15, 1981) and Uiterwyk v. Iran Express Lines, No. 81-108-Civ. T.K. (M.D. Fla., filed Feb. 15, 1981). *Id.* at 1286 n.2.

32. *Id.* at 1286.

The court did not rule on Uiterwyk's impleader motion, but treated statements of interest submitted by the United States Department of Justice in March 1981, as a motion to stay the entire proceeding.[33]

CTI appealed the stay order and sought to proceed with its claim against Uiterwyk without the impleader of Iran and IEL.[34] Uiterwyk asserted that the court of appeals lacked jurisdiction to review the stay order, claiming it was not a final order of the district court,[35] and that the stay of the entire action should be affirmed.[36] Uiterwyk claimed that without the presence of Iran and IEL, it would be prejudiced in developing evidence regarding its agency relationship with IEL; that it would incur significant costs if it had to litigate before both the district court and the Claims Tribunal; and that Iran and IEL were indispensable parties to the litigation under Rule 19(b).[37]

The threshold question the court of appeals faced was whether the stay order issued by the district court was a final order within the meaning of section 1291,[38] thus appropriate for appellate review.[39] In making this determination, a court is not bound by rigid formulas or definitions. The United States Supreme Court held in *Cohen v. Beneficial Industrial Loan Corp.*[40] that "finality" is to be given a "practical rather than a technical construction."[41] The Court added that the purpose of section 1291 is to ". . . disallow appeal from any decision that is tentative, informal or incomplete. Appeal gives the upper court a power of review, not one of intervention. So long as the matter remains

---

33. *Id.* The court noted that in a similar suit between Uiterwyk and CTI filed in the United States District Court for the District of Maryland, the United States Department of Justice filed a statement of interest and suggested that a stay of the entire proceedings may be appropriate. *Id.* at 1288 n.7. The stay order granted by the trial court applied also to Uiterwyk's separate actions against IEL filed with the district court. *See supra* note 31.

34. *CTI v. Uiterwyk*, 685 F.2d at 1286. CTI claims that the stay order is a final order under 28 U.S.C. § 1291 (1982) and reviewable by the court. *Id.* at 1287. Section 1291 provides: "The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . except where a direct review may be had in the Supreme Court." 28 U.S.C. § 1291 (1982).

35. *CTI v. Uiterwyk*, 685 F.2d at 1287.

36. *Id.* at 1289.

37. *Id.*

38. 28 U.S.C. § 1291 (1982).

39. *See supra* note 34.

40. 337 U.S. 541 (1949).

41. *Id.* at 546. This case involved the denial by a district court of a motion to require the plaintiff shareholder to post security for expenses incurred by the defendant corporation as required by state law. The Supreme Court granted review of the trial court's order as a collateral right, i.e., one that is not an element of the cause of action and which need not be deferred until the whole case is adjudicated. *Id.*

open, unfinished or inconclusive there may be no intrusion by appeal."[42] This philosophy was reaffirmed in *Gillespie v. United States Steel Corp.*,[43] where the Court emphasized that the most important considerations in deciding "finality" are "the inconvenience and costs of piecemeal review on the one hand and the danger of denying justice by delay on the other."[44] The court of appeals in *CTI v. Uiterwyk* relied primarily on Fifth Circuit decisions and their application of the *Cohen-Gillespie* principles to stay orders.[45]

In *Hines v. D'Artois*,[46] the Court of Appeals for the Fifth Circuit held that a stay order by the United States District Court for the Western District of Louisiana was a "final" decision under section 1291 and subject to appellate review.[47] In this racial discrimination in employment practices case, the district court stayed litigation until the plaintiff filed a complaint with the Equal Employment Opportunity Commission (EEOC) and pursued final agency action.[48] Based on evidence received by the court, the stayed action would be delayed at least eighteen months and most likely for a much longer period of time.[49] The court of appeals noted that in some instances, as here, a stay order effectively places a litigant "out of court" and such action should be viewed as a "final" decision under section 1291.[50] The court added: "A 'practical' construction requires that when a plaintiff's action is effectively dead, the order which killed it must be viewed as final. Effective death should be understood to comprehend any extended state of suspended animation."[51] Since the district court had not yet addressed the merits of the case, the danger of denying justice

---

42. *Id.*

43. 379 U.S. 148 (1964).

44. *Id.* at 152-53. In this case, the district court upheld defendant's motion to strike monetary claims by relatives of the deceased victim of an industrial accident. The Court noted that a "delay of perhaps a number of years in having the brother's and sister's rights determined might work a great injustice on them." *Id.* at 153.

45. The Eleventh Circuit, comprised of Alabama, Florida and Georgia, was created in 1981 by a division of the Fifth Circuit. Act of Oct. 14, 1980, Pub. L. 96-452 § 2, 94 Stat. 1994 (codified at 28 U.S.C. § 41 (1982)).

46. 531 F.2d 726 (1976).

47. *Id.* at 732.

48. *Id.* at 728. The court deferred to the jurisdiction of the EEOC, under title VII of the Civil Rights Act of 1964, to make an initial determination. *Id.* at 728 n.2.

49. *Id.* at 731-32. The delay would result from the backlog of claims filed with the regional EEOC office. It could take as long as five and one-half years for a claim to be completed. *Id.*

50. *Id.* at 730.

51. *Id.*

by delay outweighed the possible inconvenience and costs of piecemeal review—the criteria set forth in *Gillespie*.[52]

The United States Court of Appeals for the Fifth Circuit again upheld a stay order as a reviewable "final" decision under section 1291 in *McKnight v. Blanchard*[53] by reason of the "death knell" doctrine.[54] The plaintiff's prisoner suit, against the sheriff, district attorney and jail for damages and transfer to a medical facility, was stayed by the district court until he was released from prison, possibly a fourteen year delay.[55]

A stay of proceedings may be either mandatory or discretionary. The power to stay proceedings is discretionary when it is incidental to the court's power to control its own docket with the underlying intent to economize time and effort of the court, counsel and litigants.[56] The court must "weigh competing interests and maintain an even balance."[57] The United States Supreme Court in *Landis v. North American Co.*[58] noted that review of a discretionary stay by an appellate court is limited to the question whether the lower court abused its power[59] and refused to accept a narrow or mechanical formula for reviewing a discretionary stay.[60] In *Landis*, a case concerning the validity of the Public Utility Holding Company Act of 1935, the district court ordered a stay of proceedings pending Supreme Court review of a similar suit in another district court, a probable two year delay.[61] The Supreme Court held that a stay of proceedings is legal only if its effect is for a moderate or reasonable duration.[62] The Court specifically stated

---

52. *Id.* at 732.

53. 667 F.2d 477 (5th Cir. 1982).

54. *Id.* at 479. "An order is held to be appealable when the effect of the denial of an immediate appeal of collateral orders would effectively deny the litigants their day in court." *Id.* The plaintiff argued that after fourteen years it would be impossible to produce witnesses on his behalf. *Id.* at 478. See also 15 WRIGHT, MILLER & COOPER, FEDERAL PRACTICE AND PROCEDURE § 3912 (1976) for a discussion of the application of the "death knell" doctrine.

55. *Blanchard*, 667 F.2d at 478.

56. Landis v. North American Co., 299 U.S. 248, 254 (1936).

57. *Id.* at 255.

58. 299 U.S. 248 (1936).

59. *Id.* at 255. *See also* Hines v. D'Artois, 531 F.2d 726 (5th Cir. 1976); McKnight v. Blanchard, 667 F.2d 477 (5th Cir. 1982).

60. 299 U.S. at 255. "[S]ome courts have stated broadly that, irrespective of particular conditions, there is no power by a stay to compel an unwilling litigant to wait upon the outcome of a controversy to which he is a stranger . . . Such a formula, as we view it, is too mechanical and narrow." *Id.*

61. *Id.* at 256.

62. *Id.* at 257. The Court stated:

> The stay is immoderate and hence unlawful unless so framed in its inception that its force will be spent within reasonable limits, so far at least as they are susceptible of prevision and description. When once those limits have been

that a stay of indefinite duration, in the absence of a pressing need, would be an abuse of discretion.[63]

These guidelines have been applied by the federal courts in various factual situations. The potential duration of a stay order is an important factor in the appellate court's review. In *Hines,* the Court of Appeals for the Fifth Circuit ruled that a stay of action for eighteen months to possibly five and one-half years was of indefinite duration, and should be closely scrutinized under *Landis'* guidelines.[64] The Fifth Circuit also cited *Landis* in *McKnight,* holding that a stay of action for seven to fourteen years was indefinite and that the district court did not "weigh interests and maintain an even balance."[65]

The potential duration of a delay of proceedings is not the only factor considered in an appellate review of a discretionary stay. The use of stay orders when similar or concurrent suits are pending in different jurisdictions is another factor which has been addressed by the courts. The availability of the stay order in such situations is generally recognized, and a decision to delay proceedings depends on the circumstances of the case. In *Landis,* the United States Supreme Court discussed the propriety of a stay order when similar suits were pending in different federal district courts but did not render a decision on the merits because the actual circumstances of the parties had changed since the appeal to the Supreme Court was made.[66] In *Will, U.S. District Judge v. Calvert Fire Insurance Co.,*[67] the Supreme Court discussed the propriety of a stay order issued by a federal district court when a concurrent suit was filed in a state court.[68] Although the *Will*

> reached, the fetters should fall off. To put the thought in other words, an order which is to continue by its terms for an immoderate stretch of time is not to be upheld as moderate because conceivably the court that made it may be persuaded at a later time to undo what it has done.

Id.

63. *Id.* at 255.

64. *Hines,* 531 F.2d at 733. The court's discussion of whether the stay order was immoderate rested on the possibility of successful resolution of the dispute by EEOC administrative proceedings, and the protection of the parties' statutory rights and remedies. *Id.* at 733-37.

65. *McKnight,* 667 F.2d at 479.

66. *Landis,* 299 U.S. at 258. The Court reversed the court of appeals' decree and remanded the case to the district court, directing that a determination on the merits be made in accordance with the principles laid down in the Court's opinion. *Id.* at 259.

67. 437 U.S. 655 (1978).

68. *Id.* The district court stayed proceedings on several allegations of federal and state securities law violations, except for a Rule 10b-5 violation under the Securities Exchange Act of 1934 which was within the exclusive jurisdiction of the federal courts, since the state court had already set a trial date. *Id.* at 659. When Judge Will refused to reconsider his stay order or to certify an interlocutory appeal, respondent sought and

court noted that the federal court had exclusive jurisdiction over one of the issues raised, it reaffirmed the district court's discretionary power to stay proceedings because of a concurrent state suit.[69] But the Court of Appeals for the Fifth Circuit held in *Hines* that a stay of action pending final administrative agency action, not yet initiated, was an abuse of discretion.[70]

Prior to the Eleventh Circuit's consideration of *CTI v. Uiterwyk*, three other district courts had entertained cases brought by various plaintiffs against Uiterwyk in which the defendant moved to implead Iran and IEL as third party defendants.[71] In each instance, the district court severed and stayed the third party claim and proceeded to trial with the main action.[72] In *NIC Leasing, Inc. v. Uiterwyk Corp.*,[73] a case factually similar to *CTI v. Uiterwyk*, the United States District Court for the Southern District of New York found that plaintiff NIC's claims against Uiterwyk were "separate and severable from Uiterwyk's third party claims against Iran and IEL."[74] Although Uiterwyk asserted that it was acting as a general agent for IEL, the district court found that the leases Uiterwyk entered into with NIC made no mention of IEL and that the defendant did not deny nondisclosure to NIC of its agency relationship with IEL at the time it entered into the leasing contracts.[75] Since Uiterwyk could be found separately liable to NIC, the plaintiff was not required to sue IEL directly.[76] Consequently, any stay of NIC's claim against Uiterwyk would have been discretion-

---

was granted a writ of mandamus by the Court of Appeals for the Seventh Circuit to compel Judge Will to immediately proceed with the 10b-5 claims. *Id.* at 660.

69. *Id.* at 665. The Court distinguished *Will*, in which the federal court proceedings were stayed, from Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976), in which the federal court proceedings had been dismissed because of a concurrent state suit. *Id.* at 664-65. Thus, the issue in *Will* was not the federal court's refusal to exercise its jurisdiction. *Id.* at 664-65.

70. Hines v. D'Artois, 531 F.2d 726 (1976). *See supra* notes 46-52 and accompanying text.

71. NIC Leasing, Inc. v. Uiterwyk Corp., No. 81 Civ. 3866 (S.D.N.Y. Mar. 1, 1982); Cotco Leasing Co. v. Uiterwyk Corp., No. 80-706 (E.D.Pa. Nov. 9, 1981); Xtra, Inc. v. Uiterwyk Corp., No. 79-1021-Civ. T.H. (M.D.Fla. Aug. 25, 1981).

72. *CTI v. Uiterwyk*, 685 F.2d at 1289.

73. No. 81 Civ. 3866 (S.D.N.Y. Mar. 1, 1982). NIC Leasing, Inc., an Illinois corporation, leased cargo containers and related equipment to Uiterwyk. Uiterwyk failed to make payments due under the leases or to return the equipment which was in the possession of IEL, Uiterwyk's alleged principal. *Id.* slip op. at 2-4.

74. *Id.* at 5.

75. *Id.* at 3 n.2.

76. *Id.* at 6. The court noted also that a cross-claim in tort or quasi-contract against IEL or Iran was not compulsory and that plaintiff NIC could present such claims to the Claims Tribunal if it chose to do so. *Id.*

ary.[77] The court concluded that the danger of denying justice to the plaintiff by delaying the proceedings outweighed any possible prejudice to the defendant.[78] One factor considered in this balancing of interests was the indefinite delay before Uiterwyk's claims against Iran and IEL came before the Claims Tribunal.[79] Since these claims would not be determined until a court ruled in favor of NIC and against Uiterwyk, an abstention by the district court deferring to the Claims Tribunal's jurisdiction would be "circuitous."[80]

In *CTI v. Uiterwyk,* the court of appeals' holding that a stay order was a final order subject to appellate review under section 1291 relied primarily on Fifth Circuit decisions.[81] The court noted that in *Hines* the Fifth Circuit had held a stay order appealable as a final order of the district court on three grounds. First, the *Cohen-Gillespie* principles that finality be given a practical construction included extended delays that "killed" plaintiff's action. Second, factual circumstances causing protracted delay and effectively putting the plaintiff out of court must be considered. And third, the danger of denying justice because of unreasonable delay outweighed the inconvenience and cost of piecemeal review.[82]

The Eleventh Circuit decided that similar factors existed in the instant case. The stay order granted to Uiterwyk by the district court was operative pending a determination by the Claims Tribunal of its jurisdiction over Uiterwyk's claims against the impleaded parties, Iran and IEL, a decision which could be months or even years away.[83] Consequently, CTI's claim was in "suspended animation" and the plaintiff was "effectively out of court."[84] The court asserted that such an indefinite delay would deny justice to CTI. Uiterwyk's argument that it would suffer from inconsistent results due to piecemeal review was discounted. The court noted that the leases contained no indication that Uiterwyk was acting as an agent for IEL,[85] and that CTI did not insti-

---

77. *Id.* at 7.

78. *Id.* The court discounted Uiterwyk's assertions that litigation of the primary complaint would result in substantial costs for duplicative proceedings, or prejudice the defendant in developing evidence regarding its agency relationship with IEL and other defenses. *Id.* at 7-9.

79. *Id.* at 9.

80. *Id.*

81. *CTI v. Uiterwyk,* 685 F.2d at 1287.

82. *Id.*

83. *Id.*

84. *Id.* at 1288 (*quoting* Hines v. D'Artois, 531 F.2d 726, 730 (5th Cir. 1976)).

85. *Id.* at 1286 n.4. If an agent appears to be acting on his own account, he is a party to a contract even if, in fact, he is acting on behalf of an undisclosed principal. RESTATEMENT (SECOND) OF AGENCY § 322 (1958).

tute an action against either Iran or IEL.[86] Therefore, Uiterwyk could be found individually liable to CTI. The court reasoned that Uiterwyk's claims against Iran and IEL, as a separate action, were "contingent upon a finding in the district court of Uiterwyk's liability to CTI before the Tribunal [could] accurately enter a judgment in the Uiterwyk and Iran-IEL dispute."[87] Consequently, plaintiff CTI was unduly burdened by the stay order, and the court of appeals held that the trial court's decision was a final order subject to appellate review under section 1291.[88]

After the court established its appellate jurisdiction, it addressed the merits of the stay order. The court determined that the stay of proceedings between Uiterwyk and the impleaded parties, Iran and IEL, pursuant to Executive Order 12,294, was mandatory.[89] The court recognized the lower court's authority to stay proceedings pending the outcome of related suits in another forum,[90] and noted that its review was limited to an abuse of discretion standard.[91] The court could not ". . . accurately predict the time CTI [would] be forced to stand aside if it is required to await the Tribunal's determination of its jurisdiction to hear these claims (Uiterwyk's claims against Iran and IEL)."[92] Cit-

---

86. 685 F.2d at 1288. A third party may sue either the agent or the principal, or join them in one action, where the agency was initially undisclosed. RESTATEMENT (SECOND) OF AGENCY §§ 209, 337 (1958). *See also* NIC Leasing, Inc. v. Uiterwyk Corp., No. 81 Civ. 3866 (S.D.N.Y. Mar. 1, 1982). "Even though the third party defendants may be *ultimately* liable, as asserted by Uiterwyk in its third party complaint, plaintiff is not required to sue them directly. . . . Plaintiff is permitted to sue on its claims against defendant Uiterwyk, leaving aside those claims against Iran that might be heard by the Tribunal." *Id.* slip op. at 6.

87. 685 F.2d at 1288. If CTI is successful in its suit and Uiterwyk satisfies the judgment, Uiterwyk would have a claim for indemnification from IEL and Iran for damages and expenses. RESTATEMENT (SECOND) OF AGENCY § 438, comment a, § 439, comment g (1958). *See also* NIC Leasing, Inc. v. Uiterwyk Corp., No. 81 Civ. 3866, slip op. at 9 (S.D.N.Y. Mar. 1, 1982). The UNCITRAL Arbitration Rules are not conclusive regarding the effect the Claims Tribunal should give to a finding of fact by a United States District Court in cases decided against Uiterwyk. UNCITRAL Arbitration Rules, art. 33, 37 U.N. GAOR Supp. (No. 17), U.N. Doc. A/31/17 (1977). Any judgment against Uiterwyk would probably be introduced as evidence under articles 24 and 25 of the rules subject to the Claims Tribunal's determination of admissibility, relevance, materiality and weight. *Id.* arts. 24 & 25.

88. 685 F.2d at 1288.

89. *Id.*

90. *Id. See also supra* notes 66-70 and accompanying text.

91. 685 F.2d at 1288. *See also supra* notes 56-63 and accompanying text.

92. 685 F.2d at 1288. *See generally* Brill, *No Gold at the Hague*, Am. Law., Sept. 1982, at 1 (conservative estimates predict an eleven year effort to clear some 2,800 claims under $250,000 each, and an additional 650 claims over $250,000); Tagliabue, *Panel Slowly Untangling Claims on Iran*, N.Y. Times, Nov. 12, 1982, at D1, col. 3 (ten awards were made by the Claims Tribunal during its first year of operation).

ing *McKnight*, the court emphasized that a stay of indefinite duration was immoderate and, thus, an abuse of discretion.[93]

In answer to Uiterwyk's arguments supporting the stay order, the court made several points. First, Uiterwyk would not be prejudiced in developing evidence to support its agency defense since the agency was not in issue between CTI and Uiterwyk; the contract between them was the focus of the principal action.[94] Nor would Iran's or IEL's absence hamper the defendant's impossibility of performance and *force majeure* defenses since the plaintiff did not question the factual bases for such defenses.[95] Second, Uiterwyk would not be subject to duplicative costs in litigating two separate actions where its claim against Iran and IEL was separable and within the Claims Tribunal's jurisdiction.[96] The court determined that any extra costs Uiterwyk might incur by proceeding in two separate suits did not outweigh the injustice to CTI from a stay of its claim.[97] Third, joinder of Iran and IEL as third party defendants was feasible since Executive Order 12,294 did not deny the federal courts' jurisdiction over claims against such parties, it merely suspended such claims.[98] Under this analysis, the court did not reach the question of dismissal of the action under Rule 19(b).[99]

In support of its conclusion, the court cited the action taken by other federal district courts in similar cases against Uiterwyk in which the leasing agent moved to implead Iran and IEL.[100] These courts severed and stayed the third party claims and proceeded to trial with the main action.[101]

The court's main concern in *CTI v. Uiterwyk* was how to balance the implementation of the Iran-United States agreements and Executive Order 12,294 suspending claims by United States nationals against Iran against the plaintiff's demand for justice in a legitimate claim involving two American corporations. As the United States Supreme Court commented in *Landis:* "Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both."[102] The

---

93. 685 F.2d at 1288.
94. *Id.* at 1289.
95. *Id.*
96. *Id.*
97. *Id.*
98. *Id.* at 1290.
99. *Id.* at 1289-90. Federal Rule of Civil Procedure 19(b) applies when joinder of parties indispensable to the action is not feasible. *Id.* at 1290 n.10.
100. NIC Leasing, Inc. v. Uiterwyk Corp., No. 81 Civ. 3866 (S.D.N.Y. Mar. 1, 1982).
101. *See supra* notes 71-80 and accompanying text.
102. 299 U.S. 248, 255 (1936). *See also NIC v. Uiterwyk*, No. 81 Civ. 3866, slip op. at

Claims Tribunal could make findings regarding whether Uiterwyk was an agent for IEL or whether Uiterwyk's specific acts in leasing shipping equipment were authorized within the scope of the agency agreement between the parties. If Uiterwyk's claims against Iran and IEL were determined by the Claims Tribunal prior to CTI's suit in a United States district court, a district court might give collateral estoppel effect to certain findings of the Claims Tribunal.[103]

In bifurcating adjudication of the liability issue, the court of appeals has not minimized all risks to the principal parties involved in the litigation. The defendant Uiterwyk is most vulnerable. For example, Uiterwyk may be found liable to CTI, as an agent of IEL, for a greater amount than it can collect in a successful suit against Iran and IEL before the Claims Tribunal. Iran and IEL could counterclaim against their agent Uiterwyk, thereby reducing the latter's award,[104] or Iran and IEL could succeed in their defense and be found not liable.[105]

---

7 (S.D.N.Y. Mar. 1, 1982): "The prejudice resulting to Uiterwyk if all claims are not stayed must be weighed against the obvious prejudice to plaintiff if it is deprived of its choice of forum, choice of defendant, and choice of remedy." *Id.* at 7. In some instances a federal court will abstain in favor of a state forum. Typically, abstention is appropriate when: (a) a federal constitutional question may become moot depending on the state court's determination of pertinent law; (b) the state law issues presented require a prior determination by the state courts; (c) the federal court suit was initiated to restrain state criminal proceedings. Colorado River Water Conservation District v. United States, 424 U.S. 800, 814-17 (1975).

103. If these issues have been litigated in a prior suit in which all parties had an opportunity to participate, they will not be relitigated. *See* Fairchild, Arabatzis & Smith v. Prometco Co., 470 F. Supp. 610 (S.D.N.Y. 1979) (the court allowed defendant agent to avail himself of the preclusive effect of a prior foreign judgment even though he was not a party to the earlier proceeding).

The effect given by United States courts to findings by the Claims Tribunal depends on local law. Iran is not a signatory to the Convention on Recognition and Enforcement of Foreign Arbitral Awards, June 19, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 3. The Convention is applied to legal relationships considered commercial under the national law of the United States and is codified at 9 U.S.C. §§ 201-208 (1982), thereby bringing foreign arbitral awards within the ambit of the federal arbitration statute governing maritime and interstate commerce transactions.

See generally Quigley, *Accession by the United States to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, 70 YALE L.J. 1049 (1961); Smith, *International Res Judicata and Collateral Estoppel in the United States*, 9 UCLA L. REV. 44 (1962); von Mehran, *Enforcement of Foreign Judgments in the United States*, 17 VA. J. INT'L L. 401 (1977).

104. Declaration of Settlement Claims, *supra* note 3. The Claims Tribunal has jurisdiction over counterclaims arising out of the same subject matter constituting a national's claims. *Id.* at 230-31.

105. There is also the possibility that, for some reason, the Claims Tribunal would not assert jurisdiction over Uiterwyk's claim against Iran and IEL. In such an instance, the claim would revive in the United States district court where it was filed. *See supra*

CTI would remain relatively isolated from claims by Iran and IEL unless either party brought direct actions against the other before the Claims Tribunal. If CTI does not prevail in its action against Uiterwyk, it is unlikely that CTI will be able to proceed against Iran and IEL, since the deadline for filing a claim with the Claims Tribunal will have passed.[106]

In balancing the interests of the parties, the court of appeals has interposed a judicial concern for delimiting United States and international jurisdiction of claims by United States parties arising out of the Iranian crisis. Although CTI could have joined the Iranian parties as defendants and sought the jurisdiction of the Claims Tribunal, it chose not to do so. To force CTI to stand aside until defendant Uiterwyk's separate claims against Iran and IEL are determined by the Claims Tribunal would have the same practical effect as CTI suing the Iranian parties directly. CTI chose a United States corporation as its adversary and selected a United States court as the forum for adjudicating its claim. The Eleventh Circuit's decision in favor of CTI shows a judicial concern for fair, prompt and efficient administration of justice for United States plaintiffs who, although they did not directly assume risk in doing business abroad, were adversely affected by the Iranian crisis.

Geraldine Matise

---

note 24 and accompanying text.

106. Declaration of Settlement of Claims, *supra* note 3. The filing deadline with the Claims Tribunal is one year from the effective date of the agreement or six months after the appointment of the President of the Tribunal, whichever is later. *Id.* art. III, para. 4, at 232.