

The Nuts and Bolts of Access to Court for Importers and Exporters in the Meadowlands Region

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In the next decade the Meadowlands region's import/export business will substantially expand due to the growth of the local manufacturing sector, the widening of the Panama Canal (which will create an increase in shipping traffic), and infrastructure development of our ports and highways. As a small or mid-sized business owner benefiting from this growth, you will need to become informed about access to the courts for judicial remedies in case a transaction goes bad and you need to go to court to get a quick and fair resolution. Paramount to being a successful owner of an international oriented business is knowledge about judicial remedies to avert business disasters.

Your business has significant legal rights in the international trade arena. In general, you can achieve prompt access for relief from a court when it can show that unless the court acts quickly (now), you will suffer immediate and irreparable harm which cannot be solved by money. Asserting these rights before a court can be an effective way to obtain a quick resolution to disputes so you can get back to business. Whether your business is an infrequent participant in international trade or conducts millions of dollars of trade each year, all businesses are afforded remedies to disputes by both federal and state courts and the Court of International Trade (CIT)

New Jersey courts can play a significant role in import/export disputes. Usually, the state courts provide the easiest access to legal remedies, due to the relatively low cost of bringing a claim, as compared with

federal court. Our state's courts have broad powers to provide judicial relief. The New Jersey Superior Court can issue powerful remedies including Writs of Replevin, Writs of Attachment, and injunctive relief that can be requested, to provide immediate relief to the aggrieved parties.

In some cases, parties need to stop goods from being shipped from a warehouse to a destination, or a party needs to stop the delivery of goods financed on a letter of credit, because a party in the transaction chain has committed fraud or a mistake. In these cases, a party can bring an application for a Writ of Attachment, which means the court will order a seizure of the defendant's goods until a legal proceeding can take place.

To obtain a Writ of Attachment, a party will have to show (1) there is a probability that final judgment will be rendered in his/her favor; (2) there are statutory grounds for issuance of the writ (i.e. the defendant is not a resident of this state and a summons cannot be served upon him in this state); and (3) there is real or personal property of the defendant at a specific location within New Jersey which is subject to attachment. This can be an effective tool for a shipper to obtain immediate court action to prevent the movement of goods, or monies, from the state.

Similarly, a party can seek a Writ of Replevin when another party has wrongful possession of goods. In other words, your business may have imported goods and they could be delivered to the wrong party, or the seller (or a third party) refuses to deliver goods although title and ownership has been legally passed to your business. In that circumstance, you would ask the court to issue a Writ of Replevin directing that the other party turnover the goods to your business.

The Federal District Court can provide many of the same remedies as state court, but with greater experience in this field. Although access to the federal court is more expensive, it is generally the preferred court for handling more complex issues. There are also special remedies that must be brought before federal courts. Writs of Mandamus to compel a government officer (i.e. customs agent) to fulfill a duty (i.e. timely inspect incoming parcels) imposed

on him/her must be brought before the District Court in Newark, or the Court of International Trade (CIT) in New York City. Actions challenging government detention of goods for testing or further investigation must be challenged in Federal Court in Newark. Applications for injunctions can also be requested from the Federal Court or the CIT.

The CIT in New York City is the most appropriate court to handle the most complex and pressing matters. Although bringing a matter before the CIT can be extremely costly, this court is well prepared to expeditiously handle emergency matters. The CIT provides preferential determinations of certain actions which are understood to be time sensitive, such as exclusion of imports and redelivery of perishable items. With an aim to provide timely dispositions of matters involving sensitive goods, it is clear that the CIT is the preferred court of resolution for many import/export matters, where time is of the essence or a lot of money is at stake.

With such a variety of courts available to assert your company's legal rights it is important that you obtain representation by a competent attorney versed in the applicable law, procedure and regulations and who is who is familiar with the different courts described above. It is also important that the attorney you retain has a thorough understanding of your international business and the dynamics of the international economy in the Meadowlands Region.

Clearly, to do business in the international arena, you must be prepared to use the court system to protect your rights and you can make informed business decisions by simply having knowledge of access to the courts.



Scott Porter is the senior and managing partner of the firm. He represents many businesses in New Jersey and the New York metropolitan area, where he focuses his practice on civil litigation and transactional/corporate matters. On the international front, Mr. Porter has led the firm to become a correspondent law firm to the LawExchange International. The firm now actively represents diverse clients around the world, and has assisted many in obtaining trusted and qualified legal representation internationally.

Stay tuned for details on the International Business Council's upcoming International Business Symposium on October 11, 2012.