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Gregorian v. Izvestia: an Analysis of the Elusive Soviet Defendant

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NOTE

GREGORIAN v. IZVESTIA: AN ANALYSIS OF THE ELUSIVE SOVIET DEFENDANT

In *Gregorian v. Izvestia*[1], the United States Court of Appeals for the Ninth Circuit affirmed a district court ruling which set aside a default judgement for libel against the Soviet newspaper *Izvestia*[2] and reversed the district court's decision allowing a default judgment to stand for breach of contract against Soviet trading organizations[3]. The court found that under the Foreign Sovereignty Immunity Act[4] ("FSIA"), the court did not have jurisdiction over *Izvestia* and the libel claim[5]. The court vacated the default judgement on the breach of contract claim[6] under Rule 60(b)(6) which allows a court to vacate a judgment for "any other reason justifying relief . . . ."[7] This left Gregorian, a California businessman, with no recourse for his injuries.

This note examines the role FSIA played in isolating the Soviet Union from liability for its actions. Although FSIA carves out specific cases where foreign entities are not granted immunity[8], the wording of

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1. 871 F.2d 1515 (9th Cir. 1989).

2. *Id.* at 1522.

3. *Id.*

4. Foreign Sovereign Immunities Act of 1976, Act of October 21, 1976, Pub. L. No. 94-583, 90 Stat. 2891 (codified at 28 U.S.C. 1330; 1332(a)(2)-1332(a)(4); 1391(F); 1441(D); 1602-1611 (1976).

5. *Gregorian*, 871 F.2d at 1521-1522.

6. *Id.* at 1522.

7. Fed. R. Civ. P. 60(b):

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based had been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from operation of the judgment.

8. *See infra* notes 86-91 and accompanying text for exceptions to sovereign immunity.

FSIA leaves room for judicial interpretation.[9] The *Gregorian* court followed established case law and legislative interpretation in reaching its decision.[10] This note suggests that other interpretations are possible which afford some protection for the unsuspecting businessman dealing with the Soviets.

With Mikhail Gorbachev's recent push for perestroika[11] and glasnost[12], more Americans will have business contacts with the Soviets and expose themselves to possible liabilities incurred in theses transactions. If courts continue to follow the Ninth Circuit's reasoning, American businessmen who deal with the Soviets will have no recourse for commercial wrongdoing by the Soviets.

I. THE CASE

A. Facts

In 1970, Raphael Gregorian, an American of Russian decent[13], and his company, California International Trade Corporation ("CIT"), began exporting medical and laboratory equipment to the Soviet Union,[14] acting as a broker or sales representative.[15] In 1982, the Soviet Ministry of Foreign Trade awarded the status of "accreditation" to CIT.[16] This honor allowed CIT to have an office in Moscow and was evidence

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9. In the Legislative History of FSIA, the committee noted that "[t]he courts would have a great deal of latitude in determining what is a 'commercial activity.'" H.R. REP. NO. 1487, 94th Cong., 2d Sess. 1, 16, *reprinted in* 1975 U.S. CODE CONG. & ADMIN. NEWS 6604, 6615 [hereinafter House Report]. *See infra* notes 107-127 and accompanying text for judicial interpretations of "direct effect" and "commercial activities."

10. *See infra* notes 52-76 for a discussion of the court's analysis.

11. *Perestroika* refers to Gorbachev's proposed "restructuring" of the Soviet Union. Gorbachev described perestroika as "a policy of accelerating the country's social and economic progress and renewing all spheres of life." M. GORBACHEV, PERESTROIKA NEW THINKING FOR OUR COUNTRY AND THE WORLD, 11 (1987).

12. *Glasnost* (publicity) refers to Gorbachev's recent push for openness in the Soviet Union.

13. Gregorian was born in Volgograd (formerly Stalingrad) and spoke fluent Russian. Hyatt, *The CEO Who Came in from the Cold*, INC. Jan., 1986 at 87. [hereinafter Hyatt].

14. *Gregorian*, 871 F.2d at 1517.

15. Gregorian v. Izvestia, 658 F. Supp. 1224 (C.D. Cal. 1987).

16. *Gregorian*, 871 F.2d at 1517. As of 1982, CIT was the smallest company accredited to operate in the Soviet Union. About 25 companies were accredited, including IBM and E.I. Du Pont de Nemours and Co. "The Soviets usually required minimum sales of $40 million to qualify for accreditation, but they waived the rule because of [CIT's] high-quality equipment." Hyatt, *supra* note 13, at 90.

of the Soviets' high regard for Mr. Gregorian.[17]

From 1982-1984, there were several billing disputes between Mr. Gregorian and the Soviets involving three sets of equipment.[18] Mr. Gregorian claimed that he shipped the equipment to the Soviet Union pursuant to an oral contract with various customers, the Ministry of Foreign Trade, the Union of the Soviet Socialist Republics and V/O Medexport and V/O Licensintorg (Soviet foreign trade organizations); and that the Soviets installed the equipment in their hospitals.[19] Mr. Gregorian also claimed that the Soviets have not paid for any of the equipment shipped after 1982.[20] The Soviets denied any contractual relationship.[21]

On November 10, 1984 the Ministry of Foreign Trade revoked Mr. Gregorian's accreditation.[22] On November 18, 1984, the Soviets published an article in *Izvestia*, a Soviet newspaper, entitled "Duplicitous Negotiator: A Story About a U.S. Firm and an Abuse of Trust."[23] In the article, the Soviets accused Mr. Gregorian of bribery, smuggling and unethical business practices as well as accusing Mr. Gregorian of espionage.[24]

B. Lower Courts

After unsuccessful attempts to resolve the disputes with the Soviets,[25] Mr. Gregorian filed suit in United States District Court for the Central District of California on January 1, 1985 alleging libel, breach of contract and civil conspiracy. He named *Izvestia*, the USSR, V/O Licensintorg, V/O Medexport, and the USSR Ministry of Foreign Trade as defendants.[26] Mr. Gregorian charged that the Soviets revoked his accreditation and published the libelous article in *Izvestia* to avoid

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17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Gregorian*, 871 F.2d at 1517.

22. *Id.* Gregorian received a telex from the Protocol Administration of the Soviet Ministry of Foreign Trade stating that "the Ministry of Foreign Trade has decided to discontinue the activities of the firm's representatives in the Soviet." Gregorian had 90 days to leave the Soviet Union. Hyatt, *supra* note 13, at 90.

23. *Gregorian*, at 1517.

24. *Id.*

25. *Gregorian*, 658 F.Supp. at 1226. After receiving the telex, Gregorian went to Switzerland and offered to meet with the Russians. Gregorian's lawyer went to Moscow to try to reinstate Gregorian's accreditation but was unsuccessful. *See* Hyatt, *supra* note 13, at 90, 92.

26. *Gregorian*, 658 F. Supp. at 1226-1227.

paying for the medical equipment which CIT shipped to the Soviet Union.[27]

The United States State Department served process on the Soviet defendants pursuant to 28 U.S.C §1608(a).[28] On May 31, 1985, the United States Embassy in Moscow sent copies of the complaint and summons to the Soviet defendants.[29] The State Department also enclosed a note advising the defendants of FSIA and that the defendants were to respond within sixty days or risk default under United States law.[30] Under the direction of the Soviet government, the defendants rejected service and returned the documents, claiming that in accordance with the "principle of sovereign equality of state, . . . the Soviet state and its organs enjoys immunity from the jurisdiction of foreign courts."[31]

On July 31, 1985, the district court entered default judgments for four of the contract claims and the libel claim, awarding damages on the contract claims in the amount of $163,165.17 and on the libel claim in the amount of $250,000.00.[32]

On October 14, 1986, a U.S. Magistrate issued an order giving Mr. Gregorian the right to attach and execute against property in the United State owned by the Soviet defendants.[33] Mr. Gregorian seized a Cyrillic typewriter from a U.S. correspondent for *Izvestia*.[34] On November 20, 1986, the Magistrate issued a second order allowing them to execute against funds held under the Bank of Foreign Trade for V/O Medexport.[35] On November 21, 1986, counsel for V/O Medexport and V/O Licensintorg made an appearance.[36] The U.S. Marshal then executed a writ on two bank accounts of the Bank of Foreign Trade at BankAmerica International in New York City.[37] Bank of America withdrew funds to satisfy the judgment and notified Moscow that their accounts had been attached.[38] V/O Medexport and V/O Licensintorg filed motions to dismiss the case, vacate the judgment and stay the exe-

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27. *Id.* at 1227.
28. *Id.*
29. *Id.*
30. *Id.*
31. *Gregorian*, 658 F. Supp. at 1226-1227, *quoting* Embassy of the U.S.A. at Moscow, Note No. 925, May 31, 1985.
32. *Gregorian*, 658 F. Supp. at 1227.
33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.*
37. *Gregorian*, 658 F. Supp. at 1227.
38. *Id.*

cution.[39] On December 4, 1986, the court issued an order to stay the execution of judgement and froze the funds in the BankAmerica.[40]

After the appearance of the Soviet defendants, negotiations took place between the Soviets and the State Department, who encouraged the Soviets to appear.[41] The United States, as an amicus curiae, agreed with the Soviets' motion to set aside the default judgment to consider the Soviets' defenses.[42]

In April 1987, the district court granted the Soviet's motion to set aside the libel claim, holding that the claims against the Soviet newspaper lacked subject matter jurisdiction under FSIA.[43]

The court denied defendant's (V/O Medexport's) 60(b)(4) motion to set aside the default judgment for the breach of contract claims, however, holding that the court had personal and subject matter jurisdiction under FSIA.[44] The court found subject matter jurisdiction for the plaintiff's contract claim under the "direct effect" clause of FSIA which finds jurisdiction over the foreign defendant when there is a commercial act outside the United States which has a direct effect inside the United States.[45] The court applied due process standards to FSIA in deciding the personal jurisdiction issue.[46] The district court found that the Soviet trading organizations were not separate juridical entities from the USSR.[47] This would enable the plaintiffs to use contacts between the USSR and the United States as a whole as a way to gain personal jurisdiction over the trade organizations.[48]

Finally, the district court found that the court could not vacate the judgment under Rule 60(b)(6) because the Soviets had been culpable in failing to respond to the original action.[49] Rule 60(b)(6) allows a court to vacate a judgement "for any other reason justifying relief. . . ."[50] Both sides appealed the district court's decision.[51]

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39. *Id.*
40. *Id.*
41. *Gregorian*, 871 F.2d at 1518.
42. *Id.*
43. *Gregorian*, 871 F.2d at 1520.
44. *Gregorian*, 658 F. Supp. at 1234-1236.
45. *Id.* at 1236.
46. *Id.* at 1234-1236.
47. *Id.* at 1236.
48. *Id.*
49. *Gregorian*, 658 F. Supp. at 1237-1239.
50. Fed. R. Civ. P. 60(b)(6).
51. *Gregorian*, 871 F.2d at 1516.

C. *Court of Appeals*

1. *Libel Claim*

The court of appeals affirmed the district court's ruling to set aside the default judgment and dismiss the libel claim for lack of subject matter jurisdiction.[52] First, the court found that the district court correctly granted Mr. Gregorian's request for a rule 54(b)[53] certification which allowed Mr. Gregorian to immediately appeal the dismissal of their libel claim.[54] Rule 54(b) allows a court to enter a final judgment on one or more claims when "there is no reason for delay and upon an express direction for the entry of judgment."[55] In accessing the correctness of a 54(b) ruling, the court of appeals took into account other claims which may present similar issues that need to be reviewed as a single claim[56] and considered the trial court's assessment of the "equities" involved, such as prejudice and delay.[57] The court of appeals should then only overturn its decision if the court's decision was clearly unreasonable.[58] The court of appeals found that the district court did not abuse its discretion in finding that the unadjudicated claims of emotional distress and civil conspiracy were distinct and separate from

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52. *Id.* at 1522.

53. Fed. R. Civ. P. 54(b) states:

> When more than one claim for relief is present in an action . . . the court may direct the entry of a final judgment as to one or more but fewer than all the claims. . . .only upon an express determination that there is no just reason for delay and upon an express direction for entry of judgment. In the absence of such determination and direction, any other order or form of decision, however designated, which adjudicates fewer than all the claims . . . shall not terminate the action as to any of the claims . . . and the order or other form of decision is not subject to revisions at any time before the entry of judgment adjudicating all the claims. . . .

54. *Gregorian*, 871 F.2d at 1518.

55. Fed. R. Civ. P. 54(b).

56. *Gregorian*, 871 F.2d at 1518-1520. In Curtiss-Wright Corp. v. General Electric Company, 446 U.S. 1 (1980), the Supreme Court stated the standard that a court must apply when considering Rule 54(b) motions:

> The court of appeals must . . . scrutinize the district court's evaluation of such factors as the interrelationship of the claims so as to prevent piecemeal appeals in cases which should be reviewed only as single units. But once such judicial concerns have been met, the discretionary judgment of the district court should be given substantial deference . . . . The reviewing court should disturb the trial court's assessment of the equities only if it can say that the judge's conclusions were clearly unreasonable.

Curtiss- Wright Corp., 446 U.S. at 10.

57. *Gregorian*, 871 F.2d at 1519-1520.

58. *Curtiss-Wright Corp.*, 446 U.S. at 10.

the libel claim.[59] Thus, the libel claim was properly before the court of appeals.[60]

The court of appeals found that under FSIA, the court did not have subject matter jurisdiction for the libel claim.[61] The court rejected Mr. Gregorian's assertion that the "commercial activity" exception to sovereign immunity applied to the libel claim.[62] The plaintiff claimed that the purpose of the libel was commercial; the Soviets were using the libel to avoid commercial obligations.[63] The court of appeals looked to the nature of the *Izvestia* article and found that it was governmental.[64] The court relied on the fact that the newspaper was a government organ which expressed the official opinions of the Soviet Union.[65] Thus, the court of appeals found that the district court correctly dismissed the libel claim for lack of subject matter jurisdiction.[66]

2. *Breach of Contract Claim*

The court of appeals found that the district court erroneously denied the defendant's 60(b)(6) motion to vacate the default judgment.[67]

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59. *Gregorian*, 871 F.2d at 1520.

60. *Id.*

61. *Id.* at 1522.

62. *Id.* at 1521. The commercial activities exception to sovereign immunity is codified at 28 U.S.C. 1605(a):

> (a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case -
>
> (2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States. . . .

28 U.S.C. 1605(a) (1982).

63. *Gregorian*, 871 F.2d at 1521.

64. *Id.* FSIA defines commercial activities as:

> . . . either a regular course or commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction of act, rather than by reference to its purpose.

28 U.S.C. 1603(c) (1982).

65. *Gregorian*, 871 F.2d at 1521. The court in Yessenin-Volpin v. Novosti Press Agency, 443 F.Supp. 849 (S.D.N.Y. 1978) addressed the question of libel against Soviet publications. The court characterized Izvestia as an " 'organ of the Soviets of Working People's Deputies' published by 'The Presidium of the Supreme Soviet of the U.S.S.R.' " *Yessenin-Volpin*, 443 F. Supp. at 856.

66. *Gregorian*, 871 F.2d at 1522.

67. *Id.*

The court of appeals vacated the judgment and remanded the case to a lower court for proceedings to decide whether there was subject matter and personal jurisdiction over the breach of contract claim.[68] The court went on to provide ample guidance for interpreting a 60(b)(6) request and applying FSIA to the breach of contracts claim.[69]

a. Rule 60(b)(6) Motion

The court of appeals examined policy considerations involved in granting a 60(b)(6)[70] motion and found that the district court had abused its discretion by denying the motion.[71] The appellate court also found that the defendants' failure to comply with United States law (FSIA) did not constitute culpable behavior.[72] The court held that a foreign sovereign defendant's reasonable belief that it is immune from a suit under FSIA is not culpable conduct that would prevent a 60(b)(6) motion to set a aside a default judgment.[73]

b. Rule 60(b)(4) Motion

The district court denied the defendants' Rule 60(b)(4) motion to vacate a default judgment for the breach of contract claim, claiming that FSIA provided subject matter and personal jurisdiction over the defendants.[74] Since the court of appeals reversed the 60(b)(6) motion, it did not have to rule on the 60(b)(4) motion.[75] The court did recognize that on remand, the lower court may be faced with the issues of personal and subject matter jurisdiction under FSIA and set forth guidelines to help the lower court.[76]

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68. *Id.*

69. *Id.* at 1526-1530.

70. *Id.* at 1523-1526. The court looked at several policy consideration. Rule 60(b) is remedial and must be applied liberally. Meadows v. Dominican Republic, 817 F.2d 517, 521 (9th Cir. 1987). Default judgments are disfavored; cases should be decided on their merits if possible. Pena v. Seguros La Comercial, S.A., 770 F.2d 811, 814 (9th Cir. 1985). The court should consider whether the defendant seeks timely relief from a judgment and whether the defendant had a meritorious defense. *Meadows*, 817 F.2d at 521. The court should also take into account whether the plaintiff would be prejudiced if the judgment were set aside and if the defendant's actions were culpable. *Id. See infra* notes 103-106 and accompanying text for discussion of Rule 60(b)(6).

71. *Gregorian*, 871 F.2d at 1526.

72. *Id.* at 1523-1526. *See infra* notes 152-157 and accompanying text for a discussion of culpable conduct.

73. *Id.* at 1525.

74. *Gregorian*, 658 F. Supp. at 1234.

75. *Gregorian*, 871 F.2d at 1526.

76. *Id.* at 1526-1530. *See also supra* notes 67-75 and accompanying text for the

II. STATUTES

A. FSIA and Sovereign Immunity

Under the sovereign immunity doctrine, a foreign state may be immune from the jurisdiction of another state's court. The United States Supreme Court first recognized the doctrine of sovereign immunity in *The Schooner Exchange v. M'Faddon.*[77] In *The Schooner Exchange*, the court granted immunity to a foreign state which had not consented implicitly or explicitly to the suit.[78] Gradually, the judicial system began to rely on the State Department for guidance in granting immunity to foreign states. [79]

In 1952, the State Department adopted a restrictive theory of sovereign immunity.[80] Under the restrictive theory, sovereign immunity is only available to a foreign state if the case is based on the state's public acts (jure imperii).[81] If commercial activity (jure gestionis) is the basis of the suit, the foreign state cannot be granted immunity.[82] This framework posed problems in that it required a political body, the State Department, to apply legal standards though it was not equipped to hear witnesses, take evidence or have appellate review.[83]

The Foreign Sovereign Immunity Act was adopted in 1976, codifying the restrictive theory of sovereign immunity.[84] FSIA was enacted in response to the increasing number of Americans who were coming into contact with foreign states. [85] FSIA ensures that United States citizens have access to the United States judicial system to bring a claim against a foreign defendant.

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court's analysis of FSIA as it applies to the breach of contract claim.

77. 11 U.S. (7 Cranch) 116 (1982).

78. *Id.*

79. House Report, *supra* note 9, at 8, *reprinted in* 1976 U.S. CODE CONG. & ADMIN. NEWS at 6606. The practice of relying on the State Department for the determination of sovereign immunity can be found in Ex Parte Peru, 318 U.S. 578 (1943) and in Mexico v. Hoffman, 324 U.S. 30 (1945).

80. Letter from Jack B. Tate, Acting Legal Advisor to the Secretary of State, to Phillip B. Perlman, Acting Attorney General of the United States (May 19, 1952), *reprinted in* 26 *Sep't St. Bull.* 984 (1952) [hereinafter Tate Letter]. *See* House Report, *supra* note 9, *reprinted in* 1976 U.S. CODE CONG. & ADMIN. NEWS at 6607.

81. House Report, *supra* note 9, at 7, *reprinted in* 1976 U.S. CODE CONG. & ADMIN. NEWS at 6605.

82. *Id.*

83. *Id.* at 6608.

84. *Id.* at 6605. Foreign courts also apply the restrictive theory against the United States in suits against the United States. *Id.*

85. *Id.*

The Foreign Sovereign Immunity Act provides a foreign state with immunity from jurisdiction in United States courts unless the cause of actions falls into one of the exceptions enumerated in FSIA. First, a foreign state cannot raise sovereign immunity if it has explicitly or implicitly waived its immunity.[86] The second major exception to immunity is for commercial activities and is contained in three clauses.[87] A foreign state is not immune from jurisdiction in U.S. courts if the cause of action is based on commercial activity performed within the United States or if the action is based on an act performed in the United States connected to the foreign state's commercial activity outside the United States.[88] Also, a foreign state does not receive immunity if the cause of action is based on a commercial act occurring outside the United States but having a direct effect in the United States.[89] Non-commercial exceptions to FSIA also include cause of actions involving personal injury or death and damage to or loss of property occurring in the United States caused by the tortious conduct or omission of a foreign state or its employee acting within scope of his official employment.[90] Finally, foreign states are granted immunity for claims "arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights."[91]

FSIA offered little guidance in determining commercial activity, giving the courts "a great deal of latitude" in determining commercial activity.[92] Commercial activity is defined in paragraph (c) of section 1603 as including a broad range of activities from "a regular course of commercial conduct" to "a particular commercial aggression or act."[93] To determine if an activity is commercial, the court looks at the nature of the activity to see if it is governmental or public, which would preclude jurisdiction.[94]

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86. 28 U.S.C. 1605(a)(1) (1982).

87. 28 U.S.C. 1605(a)(2) (1982).

88. *Id.*

89. *Id.*

90. 28 U.S.C. 1605(a)(5) (1982).

91. 28 U.S.C. 1605(a)(5)(B) (1982).

92. House Report, *supra* note 9, at 16, *reprinted in* 1976 U.S. CODE CONG. & ADMIN. NEWS at 6615.

93. *See supra* note 64. Commercial activities include "the carrying on of a commercial enterprise such as a mining extraction company, an airline or a state trading corporation," as well as "a single contract. . ." House Report, *supra* note 9, *reprinted in* 1976 U.S. CODE CONG. & ADMIN. NEWS at 6614-6615.

94. *Id.* at 6615. *See also* Artz, *The Noncorporate Plaintiff: Hostages to the Gordian Knot of the Foreign Sovereign Immunity Act of 1976*, 54 CIN. L. REV. 907 (1986) for a discussion of commercial activity as it relates to corporate and non-corpo-

Section 1330(b)[95] provides for personal jurisdiction over a foreign defendant when the court has the power to hear the claim under section 1330(a), i.e. there is subject matter jurisdiction over the claim under FSIA.[96] Service must be made pursuant to section 1608 of FSIA. Also, minimum contacts between the foreign state and the United States are required, as well as adequate notice.[97]

FSIA was enacted to ensure that the court would decide the question of sovereign immunity free from the constraints of foreign policy.[98] The passage of FSIA removed the determination of immunity from the executive branch and gave it to the judicial branch, thus ensuring that immunity considerations would be based on legal grounds, not on foreign policy considerations.[99] Further, other countries followed the practice of having the courts be responsible for all foreign sovereignty decisions.[100] FSIA also gave the courts a way to obtain in personam jurisdiction over foreign defendants[101] and a way to afford relief to a plaintiff who has a judgment against a foreign defendant.[102]

B. 60(b)(6)

Federal Rule of Civil Procedure 60(b) allows a court to set aside a judgment in certain situations. Rule 60(b)(6) enables a court to vacate a judgment "for any reason justifying relief . . ."[103] This clause addresses situations not specifically covered in the first five clauses[104], and does not address a substantive standard of review.[105] In granting a Rule 60(b) motion, courts have broad discretionary powers which have been defined by later case law.[106]

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rate plaintiffs.

95. 28 U.S.C. 1330(b) (1982). This section provides a federal long arm provision over foreign states.

96. House Report, *supra* note 9, at 13, *reprinted in* 1976 U.S. CODE CONG. & ADMIN. NEWS at 6612.

97. *Id.*

98. House Report, *supra* note 9, at 7, *reprinted in* 1976 U.S. CODE CONG. & ADMIN. NEWS at 6612.

99. *Id.*

100. *Id.*

101. *See* 28 U.S.C. 1330(b) (1982).

102. House Report, *supra* note 9, at 7, *reprinted in* 1976 U.S. CODE CONG. & ADMIN. NEWS at 6612.

103. *See supra* note 7.

104. *Id.*

105. *Id.*

106. *See supra* note 70.

III. CASE LAW

A. FSIA and Commercial Activities

Although FSIA codified earlier law regarding sovereign immunity, a large body of case law has developed to interpret the more general phrases of the statute, resulting in differing interpretations. The phrase "commercial activities" has been interpreted by the courts to mean, as indicated in the legislative history, the nature of the act.[107]

In *Yessenin-Volpin v. Novosti Press Agency*,[108] the plaintiff brought an action for libel against Tass (Telegraph Agency of the USSR)[109], Novosti Press Agency, "an information agency of Soviet public organizations,"[110] and The Daily World, a newspaper published by the Communist Party of the United States. The court held that TASS and Novosti were entitled to sovereign immunity as both organizations did not engage in commercial activity.[111] The court rejected plaintiff's argument that even though libel is specifically mentioned as not conferring jurisdiction under section 1605(a)(5)(B), the court could still find jurisdiction under the commercial activities exceptions found in section 1605(a)(2).[112] Specifically, the court found that the publications in question were publications of the USSR itself which represented "official commentary of the Soviet government," and were not made "in connection with a contract or other arrangement with a nongovernmental agency, which activity would be found commercial under most circumstances."[113]

The third clause of section 1605(a)(2) grants subject matter jurisdiction over claims that are based on acts connected with the commercial activity of a foreign state that occur outside the United States but have a direct effect in the United States.[114] The third clause is the subject of litigation and commentary to determine the meaning of "direct effect in the United States."[115] In *Zendan v. Kingdom of Saudi Ara-*

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107. *See supra* note 94.

108. 443 F. Supp. 849 (1978).

109. *Id.* at 852.

110. *Id.* The articles were published in *Sowjetunion Heute, Krasnaya Zvezda* (Red Star), *Izvestia* and *Sovetskaya Rossiya* (Soviet Russia). *Id.* at 856.

111. *Yessenin-Uolpin*, 443 F.Supp. at 856.

112. *Id.* at 8855-856.

113. *Id.* at 856.

114. *See supra* notes 87-94 and accompanying text for a discussion of the commercial activities exception to FSIA.

115. *See* Note, *Effects Jurisdiction under the Foreign Sovereign Immunities Act and the Due Process Clause*, 55 N.Y.U. L. REV. 474 (1980); Note, *Direct Effect Jurisdiction under the Foreign Sovereign Immunities Act of 1976*, 13 N.Y.U. J. INT'L L.

bia, the court held that a direct effect must be "substantial and foreseeable."[116] In *Zendan*, the court found that something legally significant must occur in the in United States to achieve a direct effect such as a bank refusing to pay on a letter of credit, transferring money, or incurring a debt.[117] According to the court's reasoning in *Zendan*, however, a financial loss incurred by the plaintiff in the United States is not enough to constitute a direct effect.[118]

The court in *Texas Trading v. Federal Republic of Nigeria* addressed the issue of direct effects in the United States in relation to corporate plaintiffs.[119] *Texas Trading* involved breach of contract actions against Nigeria and its bank by American businesses.[120] The court pointed out that a corporation is intangible and can only suffer financial loss.[121] Thus, the court found the test to apply direct effect standard to corporate plaintiffs was whether the corporation had suffered direct financial loss.[122] In *Texas Trading*, a direct effect in the United States occurred when the defendants breached contracts which provided that money owed to the plaintiffs would be collected in the United States.[123]

The court in *Meadows v. Dominican Republic*, a case involving a breach of contract claim, found subject matter jurisdiction under FSIA.[124] The court determined that there were direct effects on the plaintiff in the United States.[125] The defendant, the Dominican Republic and one of its executive agencies, failed to pay the plaintiff, an American businessman, his commission for obtaining a loan for the plaintiff.[126] The Dominican Republic's contract with the plaintiffs to pay their commission in the United States constituted a direct effect in the United States. [127]

& POL. 571 (1981).

116. 849 F.2d 1511, 1514 (D.C. Cir. 1988).

117. *Id.* at 1515.

118. *Id.*

119. 647 F.2d 300 (2nd Cir. 1981).

120. *Id.* at 302.

121. *Id.* at 312. The court commented that "Unlike a natural person, a corporate entity is intangible; it cannot be burned or crushed. It can only suffer financial loss." *Id.*

122. *Texas Trading*, 647 F.2d at 312.

123. *Id.*

124. 817 F.2d 517, 523 (9th Cir. 1987).

125. *Id.*

126. *Id.*

127. *Id.*

B. Personal Jurisdiction and FSIA

Once subject matter jurisdiction has been established under FSIA, the court must determine if asserting personal jurisdiction over the foreign defendants meets due process requirements. Courts have applied due process standards to establish personal jurisdiction under FSIA.[128] The court must first determine if the defendant has "certain minimum contacts" with the forum state so that "maintenance of the suit does not offend traditional notions of fair play and substantial justice."[129] The court also looks to whether the foreign state has purposefully availed itself to the privilege of doing business in the United States[130]

Texas Trading considered the problem of personal jurisdiction and FSIA.[131] The court used the entire United States for establishing minimum contacts, not just the forum state,[132] and noted that section 1608 provides for world wide service of process.[133] The court applied the policy justifications found in *Hanson v. Deckla*[134], concluding that if a foreign sovereign invokes the "benefits and protections of (American) law," then the foreign defendant would expect to be brought into an American court.[135] *Texas Trading* also stressed the forum state's interest in providing redress for its citizens against foreign defendants which FSIA provides. [136]

C. Culpable Conduct Under 60(b)(6)

Rule 60(b)(6) provides that the court may vacate a judgment "for any other reason justifying relief . . ."[137] Rule 60(b)(6) offers no substantive guidance which has lead to much case law surrounding the

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128. *See* House Report, *supra* note 9, at 13, *reprinted in* 1976 U.S. CODE CONG. & ADMIN. NEWS at 6612. According to the House Report, there must be minimum contacts between the forum state and the United States and adequate notice before personal jurisdiction can exist.

129. International Shoe Co. v. State of Washington, 66 S. Ct. 154, 158 (1945), *quoting* Milliken v. Meyer, 311 U.S. 457, 463 (1940).

130. Hanson v. Denckla, 357 U.S. 235,253 (1958).

131. *Texas Trading*, 647 F.2d at 313-315. *Meadows* also considered the question of personal jurisdiction, relying on *Texas Trading's* analysis. *Meadows*, 817 F.2d at 523.

132. *Texas Trading*, 647 F.2d at 314.

133. 28 U.S.C. 1608 (1982).

134. *See supra* note 130 and accompanying text.

135. *Texas Trading*, 647 F.2d at 314, *quoting Hanson*, 357 U.S. at 253.

136. *Texas Trading*, at 315. *See also* McGee v. International Life Insurance Co., 355 U.S. 220, 231 (1957), where the Supreme Court noted that "[t]he forum has a "manifest interest in providing effective means of redress for its residents. . .".

137. *See supra* note 7.

rule. Courts have limited the broad discretionary power of the courts to several policy considerations. First, rule 60(b)(6) is remedial in nature and must be applied liberally.[138] Second, default judgments are disfavored and should be decided on their merits whenever possible.[139] The court should also take into account whether the defendant has a meritorious defense[140], i.e. if the facts the defend alleges were true, he would prevail.[141] Also, the defendant must ask for relief in a timely manner.[142] The court may consider whether granting a Rule 60(b)(6) motion will prejudice the plaintiff[143] and whether the defendant's culpable behavior lead to the default.[144] Thus, the court can deny a Rule 60(b)(6) motion if the plaintiff would be prejudiced by the court setting aside the judgement, if the defendant has no meritorious defense or if the defendant's culpable conduct caused the default.[145]

The court in *Jackson v. People's Republic of China* maintained that Rule 60(b)(6) offered relief that was "an extraordinary remedy, which may be invoked only upon a showing of exceptional circumstances."[146] In *Jackson*, a class action was filed against the People's Republic of China ("PRC") for payment of bearer bonds in default, which had been issued by the Imperial Chinese Government in 1911.[147] The appellate court upheld the district court's decision to grant the PRC's motion to set aside the default judgment under 60(b)(6) when the defendant claimed absolute immunity.[148] The court also held that extraordinary circumstances existed in the present case which justified granting the defendant's 60(b)(6) motion to dismiss.[149] The court relied on the fact that the default judgment against the PRC was "a significant issue in bilateral United States/China relations."[150] The court also found that the defendants had a meritorious defense: the PRC was unfamiliar with United States judicial practice and the PRC believed that international law did not require them to appear.[151]

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138. Falk v. Allen, 739 F.2d 461, 463 (9th Cir. 1984).
139. *Id.*
140. *Id.*
141. *Gregorian*, 658 F. Supp. at 1237.
142. *Gregorian*, 871 F.2d at 1523.
143. *Falk*, 739 F.2d at 463.
144. *Id.*
145. *Gregorian*, 871 F.2d at 1523.
146. 794 F.2d 1490, 1494 (11th Cir. 1988).
147. *Id.* at 1491-1492.
148. *Id.* at 1494.
149. *Id.* at 1495.
150. *Id.*
151. *Jackson*, 794 F.2d at 1496.

In *Pena*, the Ninth Circuit defined culpable conduct as whether the defendant had actual or constructive notice of the filing of the action and failed to respond.[152] *Meadows* followed the rules set forth in *Pena*.[153] In *Meadows*, the plaintiff sent the defendants a copy of the complaint by mail but received no receipt.[154] The plaintiff also sent a letter to the Department of State, requesting them to serve process on the defendants and the defendants still failed to respond.[155] In *Pena*, the court also found culpable conduct.[156] In *Pena*, the defendant failed to keep a correct address on file with the state insurance department which resulted in the notice of action being sent to the wrong address.[157]

IV. ANALYSIS

The *Gregorian* court, ruling in favor of the Soviet defendant, left the American businessman no remedy for the wrongs caused by the Soviet government and its agencies.[158] By finding no subject matter jurisdiction over the libel claim, the court precluded Mr. Gregorian from recovering for the injuries caused by the *Izvestia* article. The court set aside the default judgment on the breach of contract claim, remanding the case to the lower court for further proceedings.[159] Although the appellate court followed prior case law in its rulings, the court managed to leave Mr. Gregorian, an American citizen, without a remedy for the extensive damage caused by the Soviets. On remand, the lower court could find the contract claim within one of the enumerated exceptions to sovereign immunity in FSIA, giving the court jurisdiction over the claim.[160]

A. Libel Claim

The court found that the libel claim fell outside the commercial activity exception of FSIA, leaving Mr. Gregorian with no redress for

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152. Pena V. Seguros La Comercial, S.A. 770 F.2d 811, 815 (9th Cir. 1985).

153. *Meadows*, 817 F.2d at 521.

154. *Id.* at 520.

155. *Id.*

156. *Pena*, 770 F.2d at 815.

157. *Id.*

158. *See supra* notes 52-72 and accompanying text for the court's treatment of the issues involved.

159. *See supra* note 68.

160. *See supra* notes 86-91 and accompanying text for exceptions to sovereign immunity embodied in FSIA.

the financial loss caused by *Izvestia*'s false accusations.[161] Mr. Gregorian argued that jurisdiction was proper under all three clauses of the commercial activity section of FSIA.[162] First, the plaintiff claimed that the commercial activity was *Izvestia*'s sales in the United States and abroad.[163] The direct effects were the contract losses suffered by Mr. Gregorian in the United States.[164] Mr. Gregorian also argued that section 1605(a)(5)(B) only grants immunity to noncommercial torts (libel) and does not cover commercial torts (trade libel).[165]

The court rejected Mr. Gregorian's argument that activities are to be classified by their purpose, not by their nature.[166] According to the court's analysis, the plaintiff claimed that "the alleged libel was published with the *purpose* of injuring plaintiffs by avoiding commercial obligations."(emphasis in original)[167] The Court contended that the nature of the article was governmental.[168] The court also relied on *Yessenin-Volpin* which held that *Izvestia* is the "official commentary of the Soviet government."[169] The court relied on the fact that *Izvestia* is an "organ of the Soviets of Working People's Deputies, and is published by the Presidium if the Supreme Soviet of the USSR."[170] Due to the governmental nature of Izvestia, the court held that the activity was governmental, not commercial and therefore, no subject matter jurisdiction existed under FSIA.[171]

The Soviet Union is a socialist state controlled by the communist party. All publications are controlled by the state in one form or another; consequently, all publications "belong" to the people. Since all publications are censored or regulated by the government, there is no free speech in the Soviet Union.[172] Therefore, any article in a Soviet

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161. *Gregorian*, 871 F.2d at 1521-1522.

162. *Id.* at 1521.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Gregorian*, 871 F.2d at 1521.

167. *Id.*

168. *Id.*

169. *Gregorian*, 871 F.2d at 1522, *quoting Yessinen-Volpin*, 443 F.Supp. at 853.

170. *Gregorian*, 871 F.2d at 1522. The court relied on amicus curiae briefs by the United States, which described Izvestia as ". . .[a] voice of an official Soviet agency, [and] determination of its contents can be carried out only by a government entity; thus, publishing a particular article in Izvestia is a sovereign, governmental function." *Gregorian*, 871 F.2d at 1522, *quoting* Statement of Interest of the United States at 24.

171. *Gregorian*, 871 F.2d at 1522.

172. In response to heavy government censorship, underground dissident publications such as "Samizdat" flourished. There is, based on the recent developments in the Soviet Union, an opportunity for some decline in government censorship, however, it is

publication, no matter how much it may seem to be commercial in nature, will be considered "governmental," or official commentary of the Soviet Union. Under FSIA, this gives the Soviet Union *carte blanche* to publish any article, no matter how libelous, and claim that it is governmental, protecting them from a suit under FSIA.

In Mr. Gregorian's situation, there is a strong case for trade libel, a commercial activity, which would then allow a U.S. court to exert subject matter jurisdiction over the defendants under the "direct effect" clause of section 1605(a)(2). The libel directly caused sever financial hardship to Mr. Gregorian's company. Mr. Gregorian suffered a near collapse of his business and had to lay off many workers including taking himself off the payroll.[173]

There are many possible motivations behind the Soviet's printing the libelous, false statement. Mr. Gregorian could have been an example for the increasing number of American businessmen who will be dealing with the Soviet Union in the future.[174] The Soviets may have wanted to issue a warning to other businessmen who might be tempted to exploit the Soviets for personal gain or engage in espionage. It is not uncommon for the Soviet Union to arbitrarily deport an American when a Soviet is reprimanded in the United States for espionage or to use scare tactics to ensure that in the future, Americans will not be tempted to commit some for of commercial espionage. Alternatively, Mr. Gregorian may have been a part of the Soviet Union's budget slashing.[175] When Mr. Gregorian lost his accreditation, the Soviet Union signed a contract with the company that would enable the Soviets to purchase the equipment directly, without the added cost of a middleman.[176] All these explanations point to the fact that the statements were not grounded in fact.

In light of the recent thawing between the Soviets and Americans, we can expect increased contacts with the Soviets. With Gorbachev's economic reforms, the Soviets will be looking to the West for innovative "capitalist" ventures to stimulate a sluggish economy. If the courts allow the Soviets to use libel to ruin an American businessman, the courts are leaving the Soviets with an easy way to get rid of business when they wish to pursue a more profitable opportunity. Unless the courts carve out some sort of trade libel exception in the FSIA for com-

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unlikely that the Soviet government will give up control of these vital organs of propaganda.

173. HYATT, *supra* note 13 at 92.

174. *Id.*

175. *Id.*

176. *Id.*

munist or socialist countries with state owned publications, the United States is leaving its citizens unprotected and alone.

B. Breach of Contract Claim

The court of appeals found that the district court erroneously denied the Soviet defendant's rule 60(b)(6) motion to set aside the default judgment.[177] Since the court remanded the case on the basis of the 60(b)(6) motion, the court did not have to consider whether FSIA gave the courts jurisdiction over the breach of contract claim.[178] The court did, however, provide its analysis of FSIA in relation to the breach of contract claims.[179] While the Soviets may have deserved their day in court to defend themselves, the lower court should at least find jurisdiction under FSIA for the breach of contract claims and allow Mr. Gregorian to recover for the unpaid equipment.

1. Rule 60(b)(6) Motion

The district court denied the defendant's Rule 60(b)(6) motion to set aside the judgment "for any other reason justifying relief . . ." because it found the defendant's nonappearance culpable.[180] The appellate court found that the defendant's actions were not culpable and reversed the district court's ruling.[181]

The court took into account several policy considerations in deciding the defendant's Rule 60(b)(6) motion. It noted that Rule 60(b) was remedial in nature and should be liberally applied.[182] The court recognized that default judgments are disfavored as cases that should be tried on their merits.[183] The court noted that a court can deny a Rule 60(b)(6) motion if the plaintiff would be prejudiced by the setting aside the judgment, if the defendant has no meritorious defense or if the defendant's culpable conduct caused the default.[184]

The court of appeals agreed with the district court that there would be no significant prejudice to the plaintiff if the judgment was vacated and that the defendants had a meritorious defense in that if

177. *Gregorian*, 871 F.2d at 1522.
178. *Id.*
179. *Id.* at 1526-1530.
180. *Gregorian*, 658 F. Supp. at 1238.
181. *Gregorian*, 871 F.2d at 1523.
182. *Id.*
183. *Id.*
184. *Id.*

the facts the defendants allege are true, they will prevail.[185] The appellate court disagreed with the district court as to the question of culpable conduct. The court found that the defendant's conduct was not culpable, entitling them to relief under Rule 60(b)(6).[186] Plaintiff relied on *Meadows* and claimed that the defendants' behavior was culpable in that the defendants had notice of the action but failed to appear.[187] The court distinguished the present case by noting that since the Soviet Government instructed the defendants not to appear, it was not a decision made by the defendants.[188] The court held that the defendants' nonappearance did not constitute culpable behavior if based on the Soviet government's instructions to act within the Soviet's laws of immunity.[189] Also, the court claimed that the defendants acted on a reasonable belief that they were not subject to jurisdiction.[190] The court relied on *Jackson* and found that a foreign defendant's nonappearance, based on a reasonable belief that it is immune from a suit under FSIA, is not culpable behavior under Rule 60(b)(6).[191] In *Jackson*, the court considered the foreign policy implications of a default judgment and found that the PRC's nonappearance was not a bar to a rule 60(b)(6) motion.[192]

Even though the court relied on *Jackson* to reach its decision in finding culpable conduct[193], the court in *Jackson* did not base its holding on culpable conduct. Instead, the *Jackson* court balanced all the policy interests involved and looked at the foreign policy implications of its decision.[194] The court in *Gregorian* claimed to be following *Jackson* by finding culpable conduct but they neglected to consider the foreign policy implications of their decision. A fear of upsetting the improving relations between the USSR and United States, however, could have influenced the Court's decision that the defendants' actions were not culpable. While improving relations between the USSR and the United States is an important endeavor, this should not be done at the expense of a businessman who deserves redress for this wrongs. Further, FSIA was enacted expressly to take the determination of immunity out of the

185. *Id. See also Gregorian*, 658 F. Supp. at 1237.
186. *Gregorian*, 871 F.2d at 1523.
187. *Id.* at 1524.
188. *Id.*
189. *Id.* at 1525.
190. *Id.*
191. *Id.*
192. *Jackson*, 794 F.2d at 1496.
193. *Gregorian*, 871 F.2d at 1525.
194. *Jackson*, 794 F.2d at 1496.

hands of the executive branch, influenced by foreign policy considerations, and place it into the hands of the judiciary which would base its decisions on legal standards.[195]

It is possible, though, to find culpable behavior on the part of the Soviets which would then preclude them from relief under 60(b)(6). First, the Soviet Union regularly trades and does business with Western nations. It is or should be aware of the business practices of Western nations. It is unfair for the courts to allow the Soviets special privileges, such as claiming deliberate disregard of the laws of the United States to be non-culpable actions. It is absurd to think that a superpower would not be aware of the theory of restrictive immunity in the marketplace and honor it accordingly. Assuming that the Soviets are aware of the theory behind FSIA, a blatant disregard for United States law is culpable conduct.

2. *Subject Matter Jurisdiction Under FSIA*

The court does not reach a conclusion concerning personal and subject matter jurisdiction under FSIA.[196] The court did provide guidelines for a lower court to follow in making these determinations.[197] The court considered the district court's finding of subject matter jurisdiction under the third clause of FSIA which grants jurisdiction when a commercial act based outside the United States has a direct effect inside the United States.[198] First, the court interpreted "direct effect" to be substantial and foreseeable.[199] To establish a direct effect, something "legally significant" must occur in the United States.[200] Relying on *Zendan*, the court found that mere financial loss by a plaintiff as a result of actions abroad does not constitute a direct effect.[201]

The court, applying the above considerations, suggested that the plaintiff has alleged facts which may lead to subject matter jurisdiction.[202] The defendant visited California with regard to the contracts under dispute and conducted negotiations regarding the equipment.[203] The contract stipulated for payments to be made in California. The court does point out that these facts are in dispute and will be resolved

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195. *See supra* note 99.
196. *Gregorian*, 871 F.2d at 1528.
197. *Id.*
198. *Id.* at 1526-1527.
199. *See supra* note 116.
200. *See supra* note 117.
201. *See supra* note 118.
202. *Gregorian*, 871 F.2d at 1527.
203. *Id.*

by a district court.[204]

Under the third clause of FSIA which grants jurisdiction for commercial activity outside the United States with a direct effect in the United States, the court could easily find subject matter jurisdiction. The defendants breached a contract with the plaintiff which has a direct effect on the plaintiff in the United States, causing him to lose resources and much of his business. The breach resulted in American and Soviet banks refusing to transfer funds into the plaintiff's account. Although the court relied on *Zendan* and the stipulation that mere financial loss does not constitute a direct effect, the court in *Texas Trading* held that a direct effect can be found with a corporate plaintiff when the defendant's actions cause financial loss.[205] Under *Texas Trading*, the claim would fall within the commercial activity exception as the plaintiff suffered financial loss as a result of the defendant's actions.

3. *Personal Jurisdiction under FSIA*

Once the court established subject matter jurisdiction under FSIA, the court must then determine if personal jurisdiction exists. The appellate court in *Gregorian* recognized the need to satisfy the minimum contacts due process standard found in *International Shoe*.[206] The court then considered if the defendant could be considered part of the Soviet State in establishing minimum contacts necessary to gain personal jurisdiction.

The district court concluded that the defendant trade organizations were part of the Soviet State which is present throughout the world in the form of diplomatic and trade missions. including the Soviet Embassy in Washington D.C. and the consulate in San Francisco.[207] The district court also viewed the banks of the Soviet Trade Organizations as agents of the defendants.[208] The defendants argue that the defendant Medexport is a separate entity from the Soviet state and only the defendant's contracts are relevant.[209] The appellate court found that for purposes of establishing personal jurisdiction, the defendant trading organization is a separate juridical entity from the So-

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204. *Id.* at 1528.

205. *See supra* note 122.

206. *Gregorian*, 871 F.2d at 1529.

207. *Gregorian*, 658 F. Supp. at 1236.

208. *Id.* at 1235.

209. *Gregorian*, 871 F.2d at 1529. The defendants produced a Soviet lawyer who attested to the fact that the defendant trade organization was a separate entity from the Soviet state. *Id.* at 1530.

viet State and the banks, restricting the court to consider on remand only the defendants contacts when establishing personal jurisdiction.[210]

In deciding the libel question, the court ruled that the Soviet newspaper *Izvestia* was an organ of the Soviet state and incapable of commercial activity.[211] For personal jurisdiction purposes, the court determined that the foreign trade organization is not a part of the Soviet State.[212] The court of appeals is clearly ignorant of the Soviet Union and its economy. Until very recently, there was no free enterprise in the Soviet Union. Every store, hotel, enterprise, and organization is a function of the state. As is the case with publications in the Soviet Union, commercial enterprises are entirely state run and can be considered a part of the state for all intensive purposes. The district court recognized this aspect of Soviet life, stating that "U.S. courts recognize the Soviet State's monopoly over foreign trade . . . this Court concomitantly views defendant trade organizations, both generally and specifically . . . as integral parts of that State which enjoys representation through diplomatic and trade mission around the world."[213] It is odd that the court of appeals was so willing to accept *Izvestia* as a part of the Soviet State but rejected the trade organization as an agent of the State.

V. CONCLUSION

With the recent improvements of USSR-US relations and the push toward a more capitalist economy in the Soviet Union, American businessmen will inevitably have more contacts with their Soviet counterparts. As the number of transactions with the Soviet Union grow, the potential for legal disputes will also increase. The judicial system must be willing to provide a forum for resolution of disputes that may arise between the American plaintiff and his Soviet defendant.

Although FSIA was enacted in response to the increasing number of contacts between Americans and foreigners, FSIA does not always provide protection from a Soviet defendant as was the case with Mr. Gregorian. The court in *Gregorian* continually used FSIA to the detriment of the American plaintiff. If FSIA is to operate to confer jurisdiction on Soviet defendants, the courts will have to recognize the Socialist nature of the Soviet State. If courts interpret FSIA under the direction of the Ninth Circuit, it is doubtful that an American plaintiff will ever have his day in court opposing a Soviet defendant. As long as the So-

210. *Gregorian*, 871 F.2d at 1530.
211. *Id.* at 1522.
212. *Id.* at 1530.
213. *Gregorian*, 658 F. Supp. at 1236.

viet Union wishes to do business with American businessmen, the Soviet Union must be prepared to subject itself to the American judicial system.

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