TRAUB LIEBERMAN
STRAUS & SHREWSBERRY LLP
NEW YORK | NEW JERSEY | FLORIDA | CHICAGO

322 Highway 35 South
First Floor
Red Bank, New Jersey 07701

Telephone (732) 985-1000
Facsimile (732) 985-2000
www.traublieberman.com

ANTI-INJUNCTION ACT

GENERAL OVERVIEW:

The Federal Anti-Injunction Act prohibits federal courts from enjoining state court proceedings unless one of the following express exceptions is found: (1) the injunction is expressly authorized by an act of Congress, (2) it is necessary in aid of the federal court's jurisdiction, or (3) it is necessary to protect or effectuate the federal court's judgment.

Specifically, the Anti-Injunction Act reads as follows:

> § 2283. Stay of State court proceedings
> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. 28 USCS § 2283.

"The Act's core message is one of respect for state courts." Smith v. Bayer Corp., 131 S. Ct. 2368, 2375 (U.S. 2011) "The purpose of the Anti-Injunction Act is to prevent friction between federal and state courts by barring federal intervention in all but the narrowest of circumstances." 42 Am Jur 2d Injunctions § 195. The intent of the "anti-injunction" statute is to prohibit federal courts from enjoining state court suits except when a real or potential conflict threatens the very authority of the federal court and/or to avoid forum shopping. Id. "A court needs a substantial justification for issuing an injunction under the Anti-Injunction Act, and the general prerequisites for injunctive relief must usually be met." Id.

Thus, pursuant to the Anti-Injunction Act, a federal court cannot enjoin a state court proceeding absent an exception even when a state proceeding presents a federal issue; as such, the state court can proceed to resolve the federal issue. Martingale LLC v. City of Louisville, 361 F.3d 297, 2004 FED App. 0080P (6th Cir. 2004). Thus, pursuant to the Act, absent a statutory exception, a federal court may not enjoin state court proceedings merely because those proceedings interfere with a protected federal right or invade an area preempted by federal law. Sandpiper Village Condominium Ass'n., Inc. v. Louisiana-Pacific Corp., 428 F.3d 831 (9th Cir. 2005). In fact, even a claim of constitutional infringement does not, by itself, entitle a claimant to seek injunctive relief in the federal courts seeking to enjoin a pending state court proceeding. Cousins v. Wigoda, 409 U.S. 1201, 92 S. Ct. 2610, 34 L. Ed. 2d 15 (1972).

Thus, "a federal court will not issue an injunction to interfere with a state court case when a fair and adequate state remedy is available when the federal court intervention is sought, Exxon

Corp. v. Hunt, 683 F.2d 69 (3d Cir. 1982), and federal intervention is not counseled by any bad faith or misconduct in the state proceeding." Family Foundation, Inc. v. Brown, 9 F.3d 1075 (4th Cir. 1993). 42 Am Jur 2d Injunctions § 195.

The Express Exceptions:

1. **Injunctions Expressly Authorized by Act of Congress:**

[A] Function of Exception

Pursuant to the "express" exception, federal courts may enjoin state court proceedings where expressly authorized by Acts of Congress, but specific authorizing act need not specifically refer to the Anti-Injunction Act, nor is there any prescribed formula for authorization. 17A-121 Moore's Federal Practice - Civil § 121.06. "However, the congressional act must create an enforceable, specific, and uniquely federal right or remedy that a state proceeding could frustrate if not enjoined." Id. Aside from this general guiding principle, the courts have given little additional guidance as to the parameters of this exception. Id. Division among both Supreme Court decisions and lower court decisions abounds as to which statutes fall within this exception. Id.

[B] Recognized Express Exceptions

[1] Bankruptcy Proceedings

"Federal courts may enjoin state court proceedings in bankruptcy based on the "expressly authorized" exception to the Anti-Injunction Act [and] Section 362 of the Bankruptcy Code [which] provides express authorization by allowing for a broad stay of litigation, lien enforcement, and other actions that would affect or interfere with a debtor's property or estate." 17A-121 Moore's Federal Practice - Civil § 121.06. Consequently, once a files a bankruptcy petition, any state proceedings may be stayed.

[2] Removal Actions

Removal actions have been recognized as fitting within the "expressly authorized" exception. "The removal statute provides that when a state court defendant files a notice of removal in federal court (with a copy to the state court clerk), and gives written notice to all adverse parties, 'the State court shall proceed no further unless and until the case is remanded.'" 17A-121 Moore's Federal Practice - Civil § 121.06. Thus, if a case is properly removed to federal court, the federal court may enjoin the state proceedings.

While "the defendant has the right to have the federal court decide the removed case, [it does] not the right to have every issue in that case decided by the federal court, regardless of the validity of a state court's jurisdiction to consider the issue in another proceeding." 17A-121 Moore's Federal Practice - Civil § 121.06. See also Quackenbush v. Allstate Ins. Co., 121 F.3d 1372, 1378-1379 (9th Cir. 1997) (removal exception to Anti-Injunction Act did not permit

federal court to enjoin state court from deciding issue common to both cases). Moreover, the federal court's power to enjoin the state proceedings ends once the federal court jurisdiction over the matter ends, i.e. if the matter is remanded to the state court or dismissed without prejudice.

[3] Civil Rights Litigation

The Supreme Court has also interpreted the Civil Rights Act, which authorizes individuals to bring a "suit in equity" to redress civil rights deprivations under color of state law, as fitting within the "expressly authorized" exception to the Anti-Injunction Act. The Supreme Court's decision progressed slowly over several decades and evolved through such decisions Dombrowski v. Pfister, 380 U.S. 479, 483-485, 85 S. Ct. 1116, 142 L. Ed. 2d 22 (1965), Younger v. Harris, 401 U.S. 37, 49, 53-54, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971), and culminating in 1972 in Mitchum v. Foster, 407 U.S. 225, 243, 92 S. Ct. 2151, 32 L. Ed. 2d 705 (1972). In Mitchum v. Foster, the Court expressly held that the Civil Rights Act embodies a legislative exception to the Anti-Injunction Act. Mitchum v. Foster, 407 U.S. at 243. The Court based its decision in part on the conclusion that "Congress intended the Civil Rights Act to open federal courts to private citizens to enforce the Fourteenth Amendment against state action, and to use the federal courts as guardians of the people's federal rights from unconstitutional action under color of state law." 17A-121 Moore's Federal Practice - Civil § 121.06. In Mitchum v. Foster, 407 U.S. at 243, the Court also outlined three elements necessary for a statutory provision to qualify as an "expressly authorized" exception to the Anti-Injunction Act:

1. The legislation must create a "uniquely federal right or remedy";

2. The right or remedy must be enforceable in a federal court of equity; and

3. The right or remedy could be frustrated if the federal court was not permitted to enjoin a state court proceeding. Mitchum v. Foster, 407 U.S. at 243.

In addition, the Court also required a finding that the statute could be given its intended scope only if the federal court had the ability to stay state court proceedings. 17A-121 Moore's Federal Practice - Civil § 121.06.

[4] Antitrust Actions

The Clayton Act does not fall within the "expressly authorized" exception to the Anti-Injunction Act. In Vendo Co. v. Lektro-Vend Corp., 433 U.S. 623, 641, 97 S. Ct. 2881, 53 L. Ed. 2d 1009 (1977), the Supreme Court reviewed the various criteria in Dombrowski v. Pfister, Younger v. Harris and Mitchum v. Foster and concluded that the Clayton Act was not Congressional legislation "[which] could be given its intended scope only by the stay of a state court proceeding." Vendo Co., 433 U.S. at 641. "The Clayton Act, which authorizes a private action for injunctive relief against individuals and private entities, does not 'by its very essence contemplate or envision the necessary interaction with state judicial proceedings.'" 17A-121 Moore's Federal Practice - Civil § 121.06. "The Vendo Court was sharply divided, however, and

unable to obtain a majority opinion; three opinions expressed widely divergent views." Id.

[3] Inconsistent Application of "Expressly Authorized" Exception

[a] Differing Interpretations

"Lower courts have struggled to reconcile the Court's decision in Vendo Co. v. Lektro-Vend Corp. with Mitchum v. Foster, often with inconsistent and conflicting results[; thus,] the Vendo opinion clarifies the second part of the Mitchum test, which may help to identify appropriate circumstances for application of the exception." 17A-121 Moore's Federal Practice - Civil § 121.06.

[b] Other Federal Statutes

Statutes that "expressly authorize" federal injunction of state proceedings (and are within the Anti-Injunction Act exception) include the following: The Anti-Drug Abuse Act of 1988 and Agricultural Credit Act.

Statutes that do not expressly authorize federal courts to enjoin state court proceedings include the following: ERISA, Longshore and Harbor Workers' Compensation Act, Federal Rules of Civil Procedure, Antitrust Laws, The Equal Credit Opportunity Act, The Americans with Disabilities Act.

2. Where Injunction Necessary in Aid of Federal Court's Jurisdiction:

[A] Function of Exception

The second exception to the Anti-Injunction Act allows federal courts to enjoin state proceedings when "necessary in aid of" the federal court's jurisdiction. This exception is strictly interpreted and utilized in very limited circumstances. "Federal courts may issue injunctions to restrain state proceedings in removed cases and when the federal court first acquires jurisdiction in parallel in rem actions." 17A-121 Moore's Federal Practice - Civil § 121.07:

> The Supreme Court's interpretation of this exception has not greatly elucidated the concept of "in aid of its jurisdiction." First, a federal court does not have inherent power to ignore the limitations of § 2283 and to enjoin state court proceedings merely because those proceedings interfere with a protected federal right or invade an area preempted by federal law, even when the interference is unmistakably clear. ... Second, if the district court does have jurisdiction, it is not enough that the requested injunction is related to that jurisdiction, but it must be necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's

flexibility and authority to decide that case. 17A-121 Moore's Federal Practice - Civil § 121.07.

[2] How Exception Applies

[a] Removal Actions

While removal is recognized as an exception "expressly authorized" by an Act of Congress, there is also some basis for arguing that removal cases also fall within the "necessary in aid of jurisdiction" exception. Nevertheless, the latter exception is rarely applied to removal cases.

[b] Exclusive Federal Jurisdiction

Exclusive federal jurisdiction over an action is not, by itself, sufficient for the exception to apply. In fact, even when a state court intrudes into a field that that Congress has preempted and the state court has no jurisdiction over the matter, a federal court is still helpless to interfere. "State court proceedings normally should continue unimpaired by federal court intervention. Litigants may seek relief from state court errors in the state appellate courts and, if there is federal jurisdiction over an issue in the case, in the United States Supreme Court." 17A-121 Moore's Federal Practice - Civil § 121.07.

Nevertheless, when Congress specifically vests exclusive jurisdiction in a federal agency with express authorization to enforce its orders in federal court, a state court proceeding may be enjoined by a federal court.

[c] Simultaneous Duplicative Litigation

In Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Eng'rs, 398 U.S. 281, 295, 90 S. Ct. 1739, 26 L. Ed. 2d 234 (1970), the Supreme Court conclude that state and federal courts were meant to have concurrent jurisdiction and, thus, parties could simultaneously pursue identical claims in different state and federal courts.

Thus, "the 'necessary in aid of jurisdiction' exception does not permit federal courts to enjoin state court proceedings merely because the state proceedings simultaneously duplicate the federal action." 17A-121 Moore's Federal Practice - Civil § 121.07. "The 'necessary in aid of jurisdiction' exception applies only when the federal court's flexibility and authority to decide a case are seriously impaired by the parallel state court proceeding." Id. In essence, if the state court action is filed after the federal action has concluded, the state court action cannot be enjoined pursuant to this exception. Zurich Am. Ins. Co. v. Superior Ct. of California, 326 F.3d 816, 824-828 (7th Cir. 2003) (preliminary injunction was not necessary in aid of court's jurisdiction; injunction would have enjoined insureds and state court from proceeding with suits

to recover litigation costs pending district court's forthcoming ruling on federal court arbitration petition; litigation was more about preserving plaintiff's choice of federal forum to enforce arbitration agreement than federal interest in arbitration).

[d] The Res Exception

[i] In Rem Exception Is Well-Settled

"A federal court may issue an injunction in aid of its jurisdiction if that injunction is 'necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case.'" 17A-121 Moore's Federal Practice - Civil § 121.07. "Federal courts have interpreted this standard to permit an injunction when federal and state proceedings involve the same res, or when parallel proceedings both are in rem or quasi in rem." Id.

[ii] First Court to Assume Jurisdiction Decides Case

When both a state and federal court have in rem jurisdiction over an action and the same res is the subject of both actions, the court first assuming jurisdiction over the property may maintain and exercise exclusive jurisdiction.

[e] Class Actions and Complex Multidistrict Litigation

"Although ordinarily the "aid of jurisdiction" exception does not apply to in personam proceedings, federal courts have applied the exception to enjoin parallel state court actions that threaten the management of complex federal litigation." 17A-121 Moore's Federal Practice - Civil § 121.07. See In re Prudential Ins. Co. of Am., 261 F.3d 355, 365 (3d Cir. 2001) (noting exception to general pattern of in rem application for school desegregation cases). "Similarly, federal courts have applied the "in aid of jurisdiction" exception to consolidated multidistrict litigation when a parallel state proceeding threatens the court's ability to manage the litigation effectively." 17A-121 Moore's Federal Practice - Civil § 121.07. Moreover, federal courts have also utilized the "in aid of jurisdiction" exception to enjoin duplicative state class actions when they might conflict with complex federal settlements. See In re Diet Drugs, 282 F.3d 220, 233-239 (3d Cir. 2002) (action was against a diet drug manufacturer and involved a substantial number of claimants from multiple districts; the challenged injunction enjoined only the attempted mass opt-out that unquestionably interfered with the federal suit, but individual plaintiffs were still permitted to opt out). See Wesch v. Folsom, 6 F.3d 1465, 1472-1473 (11th Cir. 1993) (a federal court enjoined a simultaneous state proceeding in which the plaintiff class asserted claims regarding congressional redistricting substantially similar to those previously decided in a federal action).

3. **Where Injunction Necessary to Protect/Effectuate Federal Court Judgments (aka Relitigation Exception):**

"The relitigation exception in the Anti-Injunction Act provides that where a federal court has conclusively decided an issue, it may prevent the unsuccessful party from relitigating that same issue in state court." 42 Am Jur 2d Injunctions § 203. The purposes of the exception include: (1) reinforcing the preclusive effect of federal court judgments, (2) ensuring the finality of federal court decisions, and (3) preventing harassment through repetitive state court proceedings of those litigants prevailing in federal court. Id. The exception's scope is particularly strict and narrow, mandating that claims or issues which federal injunction bars from re-litigation in state proceedings actually have been decided by the federal court. Weyerhaeuser Co. v. Wyatt, 505 F.3d 1104 (10th Cir. 2007); U.S. v. Ernest Lowenstein, Inc., 80 Cust. Ct. 211, 451 F. Supp. 988 (Cust. Ct. 2 Div. 1978). Moreover, the exception is permissive, not mandatory. U.S. v. Ernest Lowenstein, Inc., 80 Cust. Ct. 211, 451 F. Supp. 988 (Cust. Ct. 2 Div. 1978). "A federal court should not lightly undertake the task of deciding whether to enjoin state court proceedings under the Anti-Injunction Act; that injunctive relief may issue does not mean it must issue." 42 Am Jur 2d Injunctions § 203. See also Fernandez-Vargas v. Pfizer, 522 F.3d 55 (1st Cir. 2008).

The relitigation exception is based upon the doctrines of res judicata and collateral estoppel. Thus, an injunction under the relitigation exception is properly issued where the state law claims would also be barred by the doctrine of res judicata. Brother Records, Inc. v. Jardine, 432 F.3d 939 (9th Cir. 2005); Burr & Forman v. Blair, 470 F.3d 1019 (11th Cir. 2006). "However, the relitigation exception does not authorize a federal court to protect the full res judicata effect of its decisions but rather authorizes only injunctions against state adjudication of claims or issues that actually have been decided by the federal court, not those that could have been subject of a previously issued final judgment." 42 Am Jur 2d Injunctions § 203. See also Bryan v. BellSouth Communications, Inc., 492 F.3d 231 (4th Cir. 2007), cert. denied, 552 U.S. 1097, 128 S. Ct. 882, 169 L. Ed. 2d 726 (2008); Jones v. St. Paul Companies, Inc., 495 F.3d 888 (8th Cir. 2007); Weyerhaeuser Co. v. Wyatt, 505 F.3d 1104 (10th Cir. 2007).

By contrast, federal injunction is inappropriate when the issues in the state case are only indirectly related to those in the federal case. Thus, "the relitigation exception is designed to permit a federal court to prevent the state litigation of an issue that previously was presented to and decided by the federal court." 42 Am Jur 2d Injunctions § 203. See also Next Level Communications LP v. DSC Communications Corp., 179 F.3d 244 (5th Cir. 1999).

"In order to apply the relitigation exception to the Anti-Injunction Act: (1) parties in the later action must be identical to or in privity with parties in the previous action; (2) the judgment in the prior action must have been rendered by a court of competent jurisdiction; (3) the prior

action must have concluded with final judgment on the merits; and (4) the same claim or cause of action must be involved in both suits." 42 Am Jur 2d Injunctions § 203. See also Moore v. State Farm Fire & Cas. Co., 556 F.3d 264 (5th Cir. 2009). Thus, an order that is not a final judgment is not appealable as a matter of right lacks and lacks sufficient finality to be entitled to injunctive relief under the relitigation exception. Id.

Moreover, "the relitigation exception is to be narrowly construed, and should be limited to those situations in which the state court has not yet ruled on the preclusive effect of the federal judgment." 42 Am Jur 2d Injunctions § 203. See also Bailey v. State Farm Fire and Cas. Co., 414 F.3d 1187 (10th Cir. 2005). Thus, where the state court has considered the issue of whether the prior federal order should be given res judicata effect and has determined that no such effect should be afforded, the Full Faith and Credit Act requires federal courts to respect that state court order by refusing to enjoin the state proceedings under the relitigation exception. Bryan v. BellSouth Communications, Inc., 492 F.3d 231 (4th Cir. 2007), cert. denied, 552 U.S. 1097, 128 S. Ct. 882, 169 L. Ed. 2d 726 (2008).

Smith v. Bayer Corp., 131 S. Ct. 2368 (2011), is the most recent US Supreme Court decision dealing with the Anti-Injunction Act and also offers an example of the limits of the Act. In Smith, consumers sued a pharmaceutical company in West Virginia state court regarding a drug. After denying class action certification in a similar suit, a federal district court enjoined the West Virginia court from hearing a class action certification motion under the relitigation exception to the Anti-Injunction Act. In reversing this decision, the US Supreme Court noted that the relitigation exception to the Act should be narrowly construed, and an injunction should issue only if preclusion was clearly established. Applying these principles, the Court found that the federal district court's rejection of Rule 23 certification in the related federal court suit did not preclude a later adjudication in state court of the consumer's class certification motion. Specifically, the issue decided by the federal court was not the same issue as the one presented in the state tribunal because federal and state certification rules were not identical. In addition, the consumer was not a party to the federal suit, and he was not bound to the federal court ruling since the Rule 23 certification motion had been denied. Thus, for a federal court's determination of the class certification issue to have preclusive effect, such that the relitigation exception to the Anti-Injunction Act applies, at least two conditions must be met, in that, first, the issue the federal court decided must be the same as the one presented in the state tribunal, and, second, the party seeking class certification in state court must have been a party to the federal suit, or else must fall within one of a few discrete exceptions to the general rule against binding nonparties. Smith v. Bayer Corp., 131 S. Ct. 2368 (2011).

ANTI-INJUNCTION IN REGARD TO ARBITRATION:

A. Domestic Arbitration Agreements:

Under the Federal Arbitration Act, 9 U.S.C.§ 4 ("FAA"):

> [a] party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition . . . for an order directing that such arbitration proceed in the manner provided for in such agreement. . . . The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. . . . If the making of the arbitration agreement or the failure, neglect or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, . . . the court shall hear and determine such issue. 9 U.S.C. § 4. Amaprop Ltd. v. Indiabulls Fin. Servs., 2010 U.S. Dist. LEXIS 27117, 9-10 (S.D.N.Y. Mar. 23, 2010).

The FAA also provides for a stay of proceedings where enforceable arbitration agreements are at issue, as follows:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration. 9 USCS § 3.

Also of note, the FAA is applicable only when the arbitration agreement in question is part of a maritime transaction or a contract involving interstate commerce. 108 A.L.R. Fed. 179.

In regard to issuance of injunctions of state court proceedings, case law has held that the FAA does not provide an express exception to the Anti-Injunction Act. Transouth Fin. Corp. v. Bell, 975 F. Supp. 1305, 1312 (M.D. Ala. 1997). Nevertheless, a stay pursuant to the FAA can sometimes be issued pursuant to the Anti-Injunction Act's "aid of jurisdiction" exception. See Peterson v. BMI Refractories, 124 F.3d 1386, 1395 (11th Cir.1997) (holding that "aid of jurisdiction" exception to anti-injunction act could be invoked to stay state court proceedings where the case had been removed from state court); Pervel Indus. v. TM Wallcovering, Inc., 675 F. Supp. 867 (S.D.N.Y.1987), aff'd 871 F.2d 7 (2d Cir.1989) (holding that the "aid of

jurisdiction" exception allowed district court to stay parallel state court proceedings after granting an order compelling arbitration); Transouth Fin. Corp. v. Bell, 149 F.3d 1292, 1297 (11th Cir. Ala. 1998) (holding that stay might be issued if district court found that arbitration provision was enforceable and compelled arbitration).

B. International Arbitration Agreements:

United States case law holds that federal courts have the authority to issue anti-suit injunctions to enjoin parties from pursuing claims in foreign proceedings. "Anti-Suit Injunctions in Support of International Arbitration in the United States and the United Kingdom," Ali Arif, Katherine Nesbitt and Jane Wessel, Int. A.L.R., 12, (2008). Generally, two requirements must be met before a U.S. court will issue an anti-suit injunction: 1) that the U.S. suit and the foreign suit involve the same parties and 2) that the U.S. suit and the foreign suit involve the same issues. Id. Importantly, "an anti-suit injunction is directed at the individual parties, not at the court where the litigation is taking place." Id. at 13.

At present, the U.S. Circuit Courts of Appeals are split into three separate "camps" in regard to the standards to be applied in determining whether to issue an anti-suit injunction. "Anti-Suit Injunctions in Support of International Arbitration in the United States and the United Kingdom," Ali Arif, Katherine Nesbitt and Jane Wessel, Int. A.L.R., 13, (2008). In the first view, a/k/a the conservative standard which is followed by the Third, Sixth, Eighth and D.C. Circuits, comity concerns dictate that anti-suit injunctions be issued sparingly in only rare cases. Id. Specifically, courts adhering to the conservative view "will only issue anti-suit injunctions if *res judicata* applies to bar the foreign proceedings or if the foreign litigation threatens an important public policy or the court's jurisdiction." Id. See also GE v. Deutz AG, 270 F.3d 144, 151 (3d Cir. Pa. 2001).

By contrast, the liberal view, which has been adopted by the Fifth, Seventh and Ninth Circuits, utilizes a broader and more flexible standard. "Anti-Suit Injunctions in Support of International Arbitration in the United States and the United Kingdom," Ali Arif, Katherine Nesbitt and Jane Wessel, Int. A.L.R., 14, (2008). Thus, courts adopting the liberal view consider comity considerations, but also place a greater importance on equitable considerations such as hardship to the parties, delay of proceedings and unnecessary duplication of litigation. Id. See also Kaepa, Inc. v. Achilles Corp., 76 F.3d 624, 627 (5th Cir. Tex. 1996); Affymax, Inc. v. Johnson & Johnson, 420 F. Supp. 2d 876, 883 (N.D. Ill. 2006).

Lastly, a more moderate middle-ground approach has been adopted by the First and Second Circuits wherein great weight is placed on comity considerations and "a rebuttable presumption against the issuance of an injunction" is applied. "Anti-Suit Injunctions in Support of International Arbitration in the United States and the United Kingdom," Ali Arif, Katherine Nesbitt and Jane Wessel, Int. A.L.R., 15, (2008). Nevertheless, courts adhering to the middle-

ground approach also consider the equitable factors utilized in the liberal standard, which factors can rebut the presumption against issuance of an injunction. Id. See also Quaak v. Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren, 361 F.3d 11, 19 (1st Cir. Mass. 2004) (affirming grant of injunction based upon consideration of the following factors: "the nature of the two actions (i.e., whether they are merely parallel or whether the foreign action is more properly classified as interdictory); the posture of the proceedings in the two countries; the conduct of the parties (including their good faith or lack thereof); the importance of the policies at stake in the litigation; and, finally, the extent to which the foreign action has the potential to undermine the forum court's ability to reach a just and speedy result."); Paramedics Electromedicina Comercial, Ltda. v. GE Med. Sys. Info. Techs., Inc., 369 F.3d 645, 649 (2d Cir. N.Y. 2004). For now, the three-way split among the Circuits continues, although overall U.S. courts "demonstrate a tendency to issue anti-suit injunctions in support of arbitration." "Anti-Suit Injunctions in Support of International Arbitration in the United States and the United Kingdom," Ali Arif, Katherine Nesbitt and Jane Wessel, Int. A.L.R., 16, (2008).