

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**The Export Group v. Reef Industries, Inc. and Mexican Coffee Institute**

54 F.3d 1466 (9th Cir. 1995) · No. No. 93-56022 · Decided May 22, 1995

SUMMARY

The Ninth Circuit reviewed the district court's order setting aside a default judgment against the Mexican Coffee Institute as void for lack of subject matter jurisdiction under the Foreign Sovereign Immunity Act. The court held that the tort exclusions in 28 U.S.C. § 1605(a)(5)(B) apply to the noncommercial tort exception and do not restrict the commercial-activity exception in § 1605(a)(2). The court also concluded that the Mexican Coffee Institute qualified as an agency or instrumentality of Mexico and reversed and remanded.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                          |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Ninth Circuit                                                                                                                                                                                                                                     |
| WRITING FOR THE COURT | D.W. Nelson; Browning; Hawkins                                                                                                                                                                                                                                                           |
| JURISDICTION          | Federal                                                                                                                                                                                                                                                                                  |
| DECIDED               | May 22, 1995                                                                                                                                                                                                                                                                             |
| DOCKET                | No. 93-56022                                                                                                                                                                                                                                                                             |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | Plaintiffs appealed from the district court's order granting the Mexican Coffee Institute relief from a default judgment under Federal Rule of Civil Procedure 60(b)(4), declaring the judgment void for lack of subject matter jurisdiction under the Foreign Sovereign Immunities Act. |
| STANDARD OF REVIEW    | The Ninth Circuit reviewed the Rule 60(b)(4) ruling de novo because the validity of a judgment is a legal question, and reviewed the existence of subject matter jurisdiction under the FSIA de novo.                                                                                    |
| PRECEDENTIAL VALUE    | Published Ninth Circuit opinion; precedential                                                                                                                                                                                                                                            |
| PARTIES               | The Export Group, Emilio Figueroa, Jack Andrews v. Mexican Coffee Institute                                                                                                                                                                                                              |

TOPICS

foreign sovereign immunity

subject matter jurisdiction

default judgment

statutory interpretation

appellate procedure

## PRACTICE AREAS

civil procedure

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## QUESTIONS PRESENTED

1. Whether the district court properly set aside the default judgment as void under Federal Rule of Civil Procedure 60(b)(4) for lack of subject matter jurisdiction under the FSIA.
2. Whether the FSIA's exceptions for enumerated noncommercial torts in 28 U.S.C. § 1605(a)(5)(B) limit the commercial-activity exception in § 1605(a)(2) when the alleged interference with contract rights arose from commercial activity.
3. Whether the Mexican Coffee Institute qualified as an agency or instrumentality of Mexico under the FSIA.
4. Whether the Export Group could rely on newly asserted facts on appeal to challenge the Institute's status as a Mexican government agency or instrumentality.

## HOLDINGS

1. The exclusions in § 1605(a)(5)(B) apply only to the noncommercial-tort exception in § 1605(a)(5) and do not restore sovereign immunity for tort claims arising from commercial activity encompassed by § 1605(a)(2).
2. The challenged footnote in *Gregorian v. Izvestia* was dictum, not a binding holding, because it was unnecessary to *Gregorian*'s decision and addressed a claim based on noncommercial activity.
3. The Institute established in the district court that it was a dependency of the Mexican Ministry of Agriculture and Cattle and therefore qualified as an agency or instrumentality of the Mexican government under the FSIA.

## KEY QUOTATIONS

*“Thus, by its plain and unambiguous terms, section 1605(a)(5) limits the reach of those restrictions only to noncommercial torts.”* (¶ 32)

*“Accordingly, we reverse the district court's order setting aside the default judgment on the ground that the court lacked subject matter jurisdiction over the Export Group's claim for interference with contract rights, and remand for further proceedings.”* (¶ 48)

## FACTUAL BACKGROUND

The Export Group represented Reef Industries in bidding on a contract with a Mexican government agency for tarpaulins. According to the complaint, an employee of the Mexican agency disclosed the Export Group's bid

information to an authorized agent of the Mexican Coffee Institute, who submitted a competing bid through another company. The contract was awarded to the competing bidder, allegedly causing the Export Group approximately two million dollars in lost profits. The court accepted the complaint's allegations as true because the jurisdictional facts had not been litigated.

## PROCEDURAL HISTORY

The Export Group filed suit in California state court against Reef Industries and other defendants, and the action was removed to the Central District of California. Plaintiffs later added the Mexican Coffee Institute and other defendants; defaults were entered after the Institute failed to respond to personal service. After other defendants settled, the district court entered a default judgment against the Institute and another defendant. The district court later set aside the judgment as void under Rule 60(b)(4), concluding that the FSIA barred jurisdiction, and dismissed the action against the Institute. The Ninth Circuit reversed and remanded.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The district court must reconsider the proceedings after the judgment is reinstated. It should consider INMECAFE's unresolved motion for relief under Federal Rule of Civil Procedure 60(b)(3), based on alleged fraud, misrepresentation, or misconduct. The Ninth Circuit expressed no opinion on the merits of that motion.

## CASES CITED

- *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699 (9th Cir. 1992)
- *Gerritsen v. de la Madrid Hurtado*, 819 F.2d 1511 (9th Cir. 1987)
- *Gregorian v. Izvestia*, 871 F.2d 1515 (9th Cir. 1989)
- *In re Roxford Foods, Inc.*, 12 F.3d 875 (9th Cir. 1993)
- *Retail Clerks Union Joint Pension Trust v. Freedom Food Center, Inc.*, 938 F.2d 136 (9th Cir. 1991)
- *In re Estate of Ferdinand Marcos, Human Rights Litigation*, 25 F.3d 1467 (9th Cir. 1994)
- *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428 (1989)
- *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480 (1983)
- *Meadows v. Dominican Republic*, 817 F.2d 517 (9th Cir. 1987)
- *American Commercial Barge Lines Co. v. N.L.R.B.*, 758 F.2d 1109 (6th Cir. 1985)
- *International Union of Bricklayers & Allied Craftsman v. Martin Jaska, Inc.*, 752 F.2d 1401 (9th Cir. 1985)
- *United States v. Elias*, 921 F.2d 870 (9th Cir. 1990)
- *United States v. Patrin*, 575 F.2d 708 (9th Cir. 1978)
- *Woods v. Interstate Realty Co.*, 337 U.S. 535 (1949)
- *English v. United States*, 42 F.3d 473 (9th Cir. 1994)
- *Webb v. Lewis*, 44 F.3d 1387 (9th Cir. 1994)

- Saudi Arabia v. Nelson, 507 U.S. 349 (1993)
- United World Trade, Inc. v. Mangyshlakneft Oil Production Ass'n, 33 F.3d 1232 (10th Cir. 1994)
- Letelier v. Republic of Chile, 748 F.2d 790 (2d Cir. 1984)
- Foremost-McKesson, Inc. v. Islamic Republic of Iran, 759 F. Supp. 855 (D.D.C. 1991)
- Le Donne v. Gulf Air, Inc., 700 F. Supp. 1400 (E.D. Va. 1988)
- Tifa, Ltd. v. Republic of Ghana, 692 F. Supp. 393 (D.N.J. 1988)
- Colautti v. Franklin, 439 U.S. 379 (1979)
- Republic of Argentina v. Weltover, Inc., 504 U.S. 607 (1992)